Case Number: 3307960/2023
3303874/2024
3311186/2024

EMPLOYMENT TRIBUNALS

Claimant:	Professor Neil Wyn Evans
Respondent:	(1) The Chancellor, Masters and Scholars of the University of Cambridge (2) Professor Richard McMahon (3) Emma Rampton (4) Professor Deborah Prentice
Heard at:	Bury St Edmunds (hybrid)
On:	1 - 4 June and 8 – 26 June 2026 29 and 30 July and 3, 4, 6 and 7 August 2026 (in private)
Before:	Employment Judge Graham Mrs A Buck Ms S Williams

Representation
Claimant: Mr S Brittenden KC, Counsel
Respondents: Ms A Reindorf KC, Counsel

RESERVED JUDGMENT

1. It is the unanimous decision of the Employment Tribunal that the Claimant was subjected to detriments for having made protected disclosures contrary to s. 47B Employment Rights Act 1996.

2. The complaints at Issues 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.10, 4.12 and 4.13 succeed as against the First, Second, Third and Fourth Respondents.

3. The complaints at Issues 4.9, 4.11, and 4.14 fail and are dismissed.

4. The matter will proceed to a remedy hearing.

REASONS

Introduction

1. The task for this Employment Tribunal is a specific one – we are required to determine whether the Claimant, Professor Evans, made one or more protected disclosures (also known as whistleblowing); whether he suffered one or more detriments; and whether any of the detriments were materially influenced by him having made one or more protected disclosures.

2. It is not our function (nor do we have jurisdiction) to conduct a public inquiry into alleged bullying or misogyny within the Institute of Astronomy at the University of Cambridge. This judgment is limited to the matters which have been brought before us, and to those matters for which Parliament has decided that the Employment Tribunal should have jurisdiction.

3. Many whistleblowing claims fail at the first hurdle either because the putative whistleblower is unable to persuade an Employment Tribunal that they made a disclosure of information which they reasonably believed tended to show one of the failures listed within the Employment Rights Act 1996; or because they have been unable to show why they reasonably believed that this was a disclosure in the public interest. The Claimant in this case has been able to do both of those things.

4. The Claimant has also been able to persuade us that he has been subjected to a number of detriments. The challenge experienced in this case has been with the final part of our analysis – the issue of causation and the reason why these things happened, a matter where the burden of proof lay with the Respondents to provide an explanation.

5. Our task was a complex one because it was not always clear who had been responsible for the detriments; who had been the real decision-makers; and how decisions had been reached. In many instances, as we have found, decisions were presented to decision-makers as a *fait accompli* without any genuine or meaningful inquiry into how the decision had been reached, which they then put their names to.

6. Pre-determined outcomes appeared to have been rubber-stamped, and little if any paper-trails were put before us showing the thought process behind the decision-making; and various witnesses struggled to explain to us what it was that they took into consideration when reaching their conclusions. In one example the person being complained about drafted the response to the Claimant rejecting his complaints against them. Ghost writing was a consistent and a concerning theme throughout this matter.

7. Allegations against the Claimant were accepted and subjected to a pro-longed nearly two-year investigation by the University even though they contained scant particularisation, and no evidence to support them. By contrast, a number of the Claimant's detailed concerns or complaints were dismissed out of hand without a proper process.

8. The University's handling of the matters referred to in this judgment was beset by repeated delay and progress was fitful with little if any oversight of the time the processes were taking, nor the impact upon those involved including both the Claimant and also Professor McMahon the Second Respondent.

9. Much of our consideration of the "reason why question" has had to be based upon inferences drawn from all the evidence we have read and heard, taking into account credibility, consistency, and anything else we have deemed to be relevant.

10. Due to the factors referred to above, and others, the Tribunal has been invited to consider whether there was any sort of "Groupthink" or organisational enmity on the part of the Respondents and their witnesses – a desire to shield the University from criticism. It means that this judgment is inevitably longer than it might otherwise have been.

11. We place on record at the start of this judgment our gratitude to Mr Jackson and Mr Brittenden KC who appeared for the Claimant, and to Mr Browne and Ms Reindorf KC who appeared for the Respondents, for the exceptional high quality of their legal work, and for the manner in which they reasonably and pragmatically conducted themselves throughout the hearing before us. Considerable time has been saved due to the way the lawyers co-operated, in full compliance with their duties to this Tribunal, and in furtherance of the Overriding Objective.

Background and procedural history

12. ACAS Early Conciliation took place between 2 May 2023 and 13 June 2023 with respect to the University as the First Respondent; and between 24 June and 5 July 2023 with respect to Professor McMahon (R2).

13. The ET1 for claim 3307960/2023 was filed on 12 July 2023. A private preliminary hearing for case management before Employment Judge McCluskey took place on 19 February 2024.

14. ACAS Early Conciliation took place between 29 January 2024 and 11 March 2024 with respect to Emma Rampton the Third Respondent, and Professor Prentice the Fourth Respondent. The ET1 for claim 3303874/2024 was filed on 10 April 2024.

15. Further ACAS Early Conciliation took place between 13 August and 24 September 2024 with respect to the University (R1), and then between 13 October and 17 October 2024 with respect to Professor Prentice (R4). The ET1 for claim 3311186/2024 was filed on 22 October 2024.

16. At all times the Claimant has been complaining of having suffered from detriments for having made protected disclosures. The Respondents have at all times denied the allegations.

17. A further private preliminary hearing for case management took place on 7 January 2025 before Employment Judge Laider where the legal issues for final determination were clarified and agreed, and directions were made for the final hearing. It was recorded that the Claimant argued he had made 8

protected disclosures and had suffered from 13 detriments as a result.

18. A further private preliminary hearing for case management took place before me on 14 May 2026 to deal with a small number of matters, including an application under Rule 49 for privacy/anonymity from Professor McMahon (R2). Leaving aside my serious concerns about what that would mean for open justice, the application was withdrawn after I made observations that the order sought was obviously unworkable.

19. I made further case management directions including with respect to a fourteenth alleged detriment which had not been recorded in the list of issues. This concerned the use of the University's insurance policy to fund the legal defence of Professor McMahon (R2) to defamation proceedings brought by the Claimant.

20. It was abundantly clear to me that a fourteenth detriment about the insurance policy had been included in the claim, but it had not been recorded in the agreed list of issues – there was no question that it had been abandoned as an issue. In accordance with the judgment of the Court of Appeal in ***Moustache v Chelsea and Westminster Hospital NHS Foundation Trust*** **[2025] EWCA Civ 185**, I concluded that there was a mismatch between the list of issues and the ET1, and fairness required me to amend the list of issues (as opposed to the claim) so that it could be included. As the judgment in ***Moustache*** makes clear – the list of issues is not the claim, it is no more than a case management tool designed to help the Tribunal navigate the matters it is being asked to decide.

21. I left it to the parties to agree the wording of that issue as they had been pragmatic throughout the hearing. Ultimately the issue could not be fully agreed, and I therefore made the decision for them as to how detriment fourteen should be recorded based upon how it had been pleaded within the particulars of claim. The Claimant argued that it was intended to be a complaint against the University (R1) and Professor McMahon (R2), the Respondents argued that it was a complaint against the University only. Having read the particulars of claim I was minded that it had been intended to be a complaint against the University, and it was open to the Claimant to apply to amend the claim to include a complaint against Professor McMahon (R2), however this was not advanced.

Conduct of final hearing

22. Ms Reindorf KC who appeared for the Respondents also sits as a fee paid Employment Judge in this, the South East Region of Employment Tribunals. As far as I am aware Ms Reindorf has never sat at this Tribunal; she has never sat with the two non-legal panel Members; and whereas it is entirely possible that Ms Reindorf has attended the same judicial training as me on occasion, we have never met nor spoken before. No concerns were raised by the Claimant when this matter was declared at the previous case management hearing, nor at the start of this final hearing.

23. We were provided with a hearing bundle of 10,091 pages in a PDF format. This was then broken down into 9 volumes as the Tribunal's wifi could not cope with downloading a bundle of 1 GB. A hard copy of the bundle was placed on the witness table however it appeared that some documents were

missing so the witnesses were provided with a laptop with the PDF version. Moving between different PDF volumes did slow things down, however it was the only sensible option when dealing with a large bundle, and we were grateful to Mr Browne for helping witnesses to navigate the bundle. We of course did not read the full 10,091 pages, and much of it appeared to be repetition anyway.

24. We were also provided with the following witness statements on behalf the Claimant:

i. Professor Neil Wyn Evans (the Claimant) – Professor of Astrophysics at the Institute of Astronomy – 96 pages.

ii. Dr Gudron Tausch-Pebody – EC Contracts Manager at the Institute of Astronomy - 57 pages.

iii. Professor Martin Haehnelt – Professor of Cosmology and Astrophysics at the Institute of Astronomy – 4 pages.

iv. Profess George Petos Efstathiou – Professor of Astrophysics at the Institute of Astronomy; retired former Astrophysics Chair at the University of Cambridge until 2022 – 4 pages.

v. Professor Vasily Belokurov – Professor of Astrophysics at the Institute of Astronomy – 15 pages.

25. Witness statements from three other witnesses on behalf of the Claimant were also provided but they were not relied upon and the witnesses were not called, therefore we did not read their contents and do not take them into account.

26. We were provided with the following witness statements on behalf the Respondents:

i. Professor Richard McMahon (the Second Respondent) – Professor of Astronomy, former Head of Department at the Institute of Astronomy – 11 pages.

ii. Emma Rampton – (the Third Respondent) former University Registrary – 8 pages.

iii. Professor Deborah Prentice (the Fourth Respondent) - Vice Chancellor of the University of Cambridge – 6 pages.

iv. Professor Nigel Peake – Professor of Applied Mathematics; and Head of School of Physical Sciences – 8 pages.

v. Dr Michael Glover – Academic Secretary – 4 pages.

vi. Louise Akroyd – Lead HR Business Partner for the School of Physical Sciences – 9 pages.

vii. Professor Tim Harper – Professor of History of Southeast Asia; Head of School of Arts and Humanities – 8 pages.

viii. Professor Christopher Reynolds – Professor of Astronomy at the University of Maryland; former Deputy Director at the Institute of Astronomy – 6 pages.

ix. Professor Cathie Clarke – Professor of Theoretical Astrophysics; Co-Director at the Institute of Astronomy – 4 pages.

x. Professor Anthony Challinor – Professor of Cosmology; former Deputy Director of the Institute of Astronomy – 4 pages.

xi. Professor Eilis Ferran – Professor of Company Law; former Pro-Vice Chancellor – 7 pages.

xii. Professor Kamal Munir – Pro-Vice Chancellor for University Community and Engagement, and Professor of Strategy and Policy at the Judge Business School – 5 pages.

xiii. Harry Halls – former Insurance Assistant, now Insurance Advisor – University of Cambridge – 6 pages.

27. We were provided with a helpful opening note on the law from Mr Brittenden for the Claimant; an agreed detailed chronology and cast list; and an agreed timetable. The final hearing had been listed for 20 days but was reduced to 19 due to lack of judicial resource on 5 June 2026. We informed the parties that due to the number of documents and witnesses, the Tribunal would deliberate in our own time, thus making an additional three days available to the parties for the witness evidence if needed.

28. We were asked to implement reasonable adjustments for Professor McMahon (R2) due to one diagnosed mental health condition (PTSD) and potentially others which have not been formally diagnosed, including possibly dyslexia. These were not objected to by the Claimant and which the Tribunal approved. This included privacy whilst entering and leaving the hearing room; ability to take notes and additional thinking time and breaks; and also avoiding the use of compound questions.

29. We also allowed Professor McMahon to bring his own unmarked bundle of documents, and we allowed him to be accompanied by someone to help him find pages in the electronic bundles. Whereas we had agreed to the use of a privacy screen whilst giving evidence, the Claimant and his witnesses agreed to view the hearing remotely from another room in the Tribunal building which avoided the need for the screen.

30. In addition to making adjustments for Professor McMahon in the hearing, we also took into account the impact of the mental health impairment(s) on his manner of answering questions and his ability to recall.

31. As will be noted later in this judgment, the cross examination of Professor McMahon was incredibly difficult due to his mental health condition(s) which meant that he would query the precise meaning of many of the words in the questions, for example the meaning of the word “legitimate” which for many people is a word which is easy to understand.

32. Further to that Professor McMahon's answers were very long and involved him thinking through out loud his answers to the questions as he sought to process the question and his answer, frequently agreeing with the premise of the question and then changing his mind. We make absolutely no criticism of Professor McMahon for the way he answered questions where it was due to the impact of his impairments.

33. We place on record that Mr Brittenden's handling of the witness during cross-examination was incredibly fair and measured, and whereas it was incumbent upon counsel to put his client's case to the witness in this adversarial forum, he did so fully in compliance with the guidance available in the Equal Treatment Bench Book as well as in accordance with the relevant toolkits in the Advocate's Gateway.

34. Nevertheless, Professor McMahon did become repeatedly visibly distressed during his evidence, his answers were very difficult to follow, and the Members and I became very concerned about the fairness to him. Whereas we had a number of breaks on the morning of 17 June 2026 I became concerned that the adjustments we had made to date may not be sufficient and I queried whether the cross-examination questions should instead be put in writing to him. I noted it would not be ideal as it makes cross-examination very difficult and presented unfairness to the Claimant's presentation of his case, but I asked the parties to consider it.

35. As it transpired that proved unnecessary as we found that by slowing down questioning even further and allowing Professor McMahon to give very long answers uninterrupted, we were able to get through the evidence and the witness provided answers to questions.

36. Both counsel co-operated and were entirely reasonable and amenable when it came to discussing potential further adjustments for Professor McMahon's evidence, and we were grateful for their continued pragmatism in helping us to give all sides a fair hearing.

Open Justice

37. It is incredibly important for justice to be seen to be done - the principle of open justice is a fundamental one as the public are entitled to know how, and why decisions are reached by the Employment Tribunal.

38. The case generated public and media interest and we arranged for CVP links to be made available upon request to the public, and we understand that in the region of 30 observers joined on average each day. We also made a second hearing room available for members of the public to observe the hearing by video if there was not sufficient room in the main hearing room. We also permitted live tweeting to be conducted from within the hearing room. Whereas I was asked to direct the tweeting or commentary to be accurate, I did not consider that I had the power to issue such a direction as I do not police Twitter or X, nevertheless I did request that any such commentary be as accurate as possible. If any live tweeting did take place the Tribunal panel did not notice it and it did not impact the hearing in any way.

39. In addition, I agreed for copies of the bundles and witness statements to be

made available to the public in person and online so that they could follow proceedings. Regrettably, at the moment the Tribunal does not have the facilities to provide access to documents online, however the Claimant was able to facilitate this on his own anti-bullying website. Appropriate safeguards were put in place – including limiting online access to hearing hours; displaying a contempt of court warning against making recordings of the hearing and copies of the documents; and password protecting the documents and watermarking the bundle.

40. This assisted in furthering the principle of open justice, and it enabled the public not merely to follow proceedings, but also to help understand how our decisions have been reached. It is perhaps something which might be helpful in other cases in future if the Tribunal were provided with such a resource – it would help the public's understanding of the work of the Employment Tribunal.

41. Contempt warnings were placed online and at the Tribunal venue against making recordings of the hearing (without consent) and warning against making copies of the hearing documents. At no point has it been suggested that anyone failed to comply with those warnings.

42. We did not refuse access to anyone to attend in person or online. Where it appeared to me that observers were waiting to be admitted to the online hearing room, I paused the hearing and directed them to be given access.

43. I understand that some journalists struggled to gain access to the bundles or the court building, however I had been clear that they were absolutely entitled to view the hearing either in person or online and must be given the same access to the materials as everyone else, subject to the safeguards above. I apologise on behalf of the Tribunal administration if there were occasions where access to the hearing was delayed or made difficult – it was not intentional.

Covert recordings

44. Some of the documentary evidence includes transcripts of covert recordings made at work by the Claimant.

45. Whereas higher courts have on occasion found the making of covert recordings to be a distasteful thing to do[1], we recognise that in some instances it may be the only way that evidence of potentially unlawful behaviour can come to light. The Claimant told us that he was making recordings for various reasons including his own protection. In this case several of the Respondents' witnesses struggled to remember details due to the passage of time, therefore the transcripts were of assistance to the Tribunal with respect to fact finding, and without them our findings may have been very different. Nevertheless, the making of covert recordings at work is not a practice which this Tribunal encourages.

46. The test for the admission of evidence is whether it is relevant and necessary for the fair disposal of proceedings. The recordings clearly fell

[1] *Vaughan v Lewisham Borough Council and others* [2013] UKEAT/0534/12/SM [12]

within that definition, and in any event the Respondents were again pragmatic and made no attempt before us to exclude them.

Hearing timetable

47. On 9 June 2026 (day 7) the Claimant confirmed that he no longer sought to argue that the information communicated tended to show that a miscarriage of justice had occurred, was occurring or was likely to occur under s. 43B(1)(c) ERA 1996.

48. On 10 June 2026 (day 8) Ms Reindorf confirmed that the Respondents did not seek to question Professor Pebody, Professor Haehnelt, Professor Efstathiou and Professor Belokurov who had provided statements on behalf of the Claimant. This was on the basis that the Respondents said that their evidence was not relevant to the legal issues, and not on the basis that the contents of their statements were accepted. We took this into account, although some of the evidence was relevant, for example, Dr Pebody's perceived distress about her treatment at work, observed by two other witnesses (Professor Gilmore and Professor Belokurov), and this was potentially relevant to matters such as the Claimant's reasonable belief at the material time. Such evidence, where it was relevant to the legal issues, was therefore accepted as being unchallenged.

49. We were provided with additional disclosure from the Respondents of 444 pages on 10 June 2026 to address matters raised in the Claimant's oral evidence to us – in particular a Declaration of Honour document entered into by the First Respondent, as well as extracts from the Claimant's blog on his anti-bullying website. We were taken to relevant pages in the disclosure although we did not read all of it. The Claimant did not object to admission of this evidence. On 22 June 2026 we were provided with two additional documents from the Respondents and again the Claimant did not object to these.

50. The Claimant gave evidence between 8 and 12 June 2026.

51. Professor Reynolds gave evidence from overseas by video on 12 June 2026. Professor Peake gave evidence on 12 and 15 June 2026. Professor Challinor and Professor Harper gave evidence on 15 June 2026.

52. Professor McMahon (R2) gave evidence on 16 and 17 June 2026. Ms Akroyd gave evidence on 17 and 18 June 2026. Ms Rampton (R3) and Dr Glover also gave evidence on 18 June 2026. Professor Ferran and Professor Munir gave evidence on 19 June 2026.

53. Professor Clarke, Mr Halls, and Professor Prentice (R4) all gave evidence on 22 June 2026. The Tribunal then adjourned on 23, 24, and 25 June to re-read our notes of the considerable oral evidence in this matter, before written and oral closing submissions were delivered on 26 June. The Claimant withdrew his reliance on concealment under s. 43B(1)(f) within his closing submissions.

54. The panel met for deliberations on 29 and 30 July, and 3, 4, 6 and 7 August 2026.

55. There were a small number of disruptions throughout the hearing due to noises from the Tribunal microphones and air-conditioning; and a bus revving its engine outside the Tribunal's window for an hour on 15 June 2026 which I put a stop to. Whereas these created brief annoyances and disturbances, they did not impact the overall fairness of the hearing.

List of issues

DETRIMENTS ON GROUNDS OF HAVING MADE A PROTECTED DISCLOSURE - s.47B Employment Rights Act 1996

Protected Disclosures

1. The Claimant claims he made the following protected disclosures:

1.1. **Protected disclosure 1** (**[25(i)]**, para 6.1 of second claim, and para 5 of the third claim) - On 20 July 2021, C emailed Professor Peake raising concerns about the health and safety of Dr Pebody as a result her treatment by R2, and about academic malpractice by R2's failure to take action on the ORP Grant. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.2. **Protected disclosure 2** (**[25(i)]**, para 6.1 of second claim, and para 5 of the third claim) - On 21 July 2021, C sent Ms Birrell, in her capacity as a member of R1's HR team, the same email he had sent Professor Peake on 20 July 2021. See Protected disclosure 1 above. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.3. **Protected disclosure 3** (**[25(ii)]** and para 6.2 of second claim) – On 25 July 2021 C emailed a document he had written detailing the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody to Professors Challinor and Reynolds, the Deputy Directors of the Institute of Astronomy.(C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.4. **Protected disclosure 4** (**[25(ii)]**, para 6.3 of second claim, and para 5 of the third claim) – On 26 July 2021 C emailed his document detailing the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody (same document as in Protected disclosure 3) to Ms Macharia who was in charge of Departmental Administration. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.5. **Protected disclosure 5** (**[25(ii)]**, para 6.3 of second claim, and para 5 of the third claim) - On 26 July 2021 C met Professor Peake and discussed in further detail the concerns raised within the 20 July 2021 disclosure and the document in which he had described the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody in further detail. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.6. **Protected disclosure 6** (**[25(iii)]** and para 6.4 of second claim) - On 26 July 2021 C met Professors Challinor and Reynolds and discussed in further detail the concerns raised within the 20 July 2021 disclosure and the document in which he had described the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody in further detail. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.7. **Protected disclosure 7** **([25(iv)]** (**[25(iv)],** para 6.3 of second claim and para 5 of the third claim) - On 2 August 2021 C submitted a document titled '*The Behaviour of Richard McMahon to Gudrun Pebody*' to Professor Peake, Ms Birrell and Louse Akroyd, R1's HR Business Manager. The document detailed historical issues at the Institute involving R2, R2's behaviour concerning the ORP grant and the Astrophysics examinations process, and the impact on Dr Pebody. (C alleges this is a protected disclosure under s43B(1) (b), (c) and (d)).

1.8. **Protected disclosure 8** **(**para 17 of second claim) **–** On 12 December 2023 C raised a grievance addressed to R3 (C alleges this is a protected disclosure under s43B(1) (b), (c) and (f)).

2. Did the Claimant make any protected disclosures?

2.1. Did the Claimant disclose any information?

2.2. If so, was the information disclosed within s.43C ERA (i.e. to the employer or other responsible person)?

2.3. Did the Claimant hold a reasonable belief that this information showed relevant failure(s), i.e. that health and safety had been endangered, was being endangered, was likely to be endangered; that a person had failed, was failing, or was likely to fail to comply with a legal obligation; and / or that a miscarriage of justice had occurred, was occurring, or was likely to occur as set out against each protected disclosure?

2.4. Did the Claimant hold a reasonable belief that the disclosure(s) was in the public interest?

3. If the Claimant made a protected disclosure, was the Claimant subjected to a detriment on the ground that he made the protected disclosure? The Claimant relies on the following alleged acts / failures as detriments (the "**Alleged Detriments**").

Detriments

4. The Claimant claims he was subjected to the following detriments on the ground that he had made a protected disclosure or protected disclosures as set out above:

4.1. **Detriment 1** – R1 investigating and continuing to investigate R2's complaint when it was clear that it was malicious and/or vexatious, including conducting the investigation in breach of R1's Dignity at Work Policy.

4.2. **<u>Detriment 2</u>** – R1 delaying the conclusion of the investigations into (a) C's protected disclosures and (b) or R2's complaint about C dated 29 July 2021, despite it being clear that the latter was unfounded, without merit, C alleges, vexatious and/or malicious.

4.3. **<u>Detriment 3</u>** – R2 submitting the 29 July 2021 complaint against C.

4.4. **<u>Detriment 4</u>** – R2 failing to withdraw his complaint against C following the findings of the investigation.

4.5. **<u>Detriment 5</u>** – R2 informing C's colleagues and peers about R2's 29 July 2021 complaint against C, <u>risking</u> damage to C's reputation.

4.6. **<u>Detriment 6</u>** (second claim para 25) – R1, R3 and R4's rejection by letter dated 19 January 2024 of C's grievance dated 12 December 2023.

4.7. **<u>Detriment 7</u>** (second claim para 27) – R1's failure to address the grievance of 30 August 2022 in a timely way and to provide any outcome by 10 April 2024.

4.8. **<u>Detriment 8</u>** (second claim para 32) – R4's rejection on 6 November 2023 of C's complaint of 15 June 2023.

4.9. **<u>Detriment 9</u>** (second claim para 35) – R1's failure to safeguard C by moving Professor McMahon's office close to C at the Institute of Astronomy so that C is now rarely able to use his Office.

4.10. **<u>Detriment 10</u>** (third claim para 24) – R1's failure to investigate properly the allegations against R1's Human Resources department in C's grievance of 30 August 2022 evidenced in the grievance outcome of 16 May 2024 from Professor Harper.

4.11. **<u>Detriment 11</u>** (third claim para 25) – R1's failure to hear C's appeal of the grievance outcome from Professor Harper of 20 May 2024.

4.12. **<u>Detriment 12</u>** (third claim para 28) – R1's refusal to address C's grievance of 2 September 2024 which, inter alia, constitutes a breach of Statute C, Special Ordinance C(xii) of R1's Statutes and Ordinances.

4.13. **<u>Detriment 13</u>** (third claim para 35) – R3's refusal and failure to take any action in relation to the matters brought to her attention in C's complaint to her of 6 October 2024 (about failure refusal to hear his grievance in breach of C's legal rights and R1's Statutes and Ordinances). Her most recent refusal was on 15 October 2024.

4.14. **<u>Detriment 14</u>** – The First Respondent's failure to investigate, and its facilitation of, the improper use of the Fist Respondent's insurance policy to support the Second Respondent in the defamation proceedings brought by the Claimant.

<u>Time Limits</u>

5. Does any or do all of the Alleged Detriments above (to the extent that they are found to be detriments) amount to part of a series of similar acts or failures within the meaning of s48 ERA?

6. If not, were any of C's complaints brought outside the relevant time limit specified in s48 ERA?

7. If so, was it reasonably practicable for the C to present his complaints within the relevant time limit specified in s48 ERA?

8. If so, would it be reasonable to extend time for the bringing of those complaints?

<u>Remedy</u>

9. What compensation should the Claimant be awarded?

10. Has the Claimant suffered any financial losses?

11. What compensation for injury to feelings is recoverable?

12. Have the Respondents behaved in a high-handed, malicious, insulting or oppressive manner entitling the Claimant to be awarded aggravated damages?

13. Did either party breach the ACAS Code on Disciplinary and Grievance procedures? If so, should any compensation be increased / reduced as a consequence?

Findings of fact

56. The claim's subject matter has a complex factual history with multiple complaints and disclosures raised with various people, many of which were pursued simultaneously. This judgment therefore presents the findings of fact chronologically, except for the defamation proceedings, the use of the University insurance policy, and Professor McMahon's (R2) office location, which are separately presented for clarity.

57. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.

58. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgement about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.

59. The Tribunal heard extensive evidence about the background to the dispute, including matters relating to grant approval. We have taken that evidence into account insofar as it provides context. However, we make

findings only on those matters necessary to determine the legal issues before us.

60. The Claimant is a Professor of Astrophysics within the Institute of Astronomy at the University of Cambridge. The Claimant's employment commenced on 1 October 2002 and he has previously served as Deputy Director and Acting Director of the Institute.

61. Until the facts giving rise to this claim, the Claimant had not, within his time at the University, made any previous grievance complaint or alleged that he was making a whistleblowing disclosure.

62. The Claimant and Professor McMahon (R2) have known each other since they were students in the 1980s. It was clear from the evidence of both individuals that they have worked together for many years, and each has considerable respect for the other's work and achievements. The Claimant has at times described Professor McMahon as a brother in astronomy, and whereas he has named him as a Respondent in these proceedings, he has described him also as a victim in this matter based upon what the Claimant says was the mishandling of this matter by the University's HR Department.

63. Professor McMahon (R2) was appointed as Director of the Institute in 2017. The Directorship lasts for a term of five years.

Gaia grant

64. Gaia is a mission of the European Space Agency for which the University had been awarded grants. The person within the Institute responsible for managing the teams working on the project and for managing the financial resources is referred to as a Principal Investigator ("PI"). The Tribunal formed the view that the PI was similar in some respects to the role of a Project Manager.

65. Professor Gilmore, like the Claimant and Professor McMahon (R2), is another highly accomplished Astrophysicist, and he had acted as the PI on Gaia for some time. Professor McMahon (R2) as the then Director of the Institute of Astronomy, had asked for the help of the Claimant and Professor Belokurov (another Astrophysicist within the institute) with succession planning for the PI role on the grants as the University at that time had a default retirement age of 67 (now 69), and Professor Gilmore had already had one extension and was seeking another. The Claimant was asked to assist in negotiating a date for Professor Gilmore to hand over the role to Dr Walton who was favoured by Professor McMahon. It was quite clear that Professor McMahon did not want to give Professor Gilmore a second extension to work beyond retirement and to continue in his role.

66. There had already been tensions and difficulties in the working relationship between Professor Gilmore and Professor McMahon for some time, and accordingly it had not been possible to agree succession planning for the PI role that would include (i) who to hand over the PI role to; and (ii) when that would take place. Professor McMahon solicited the assistance the Claimant and Professor Belokurov in engaging with Professor Gilmore in October 2020 to agree a date to hand over to Dr Walton.

67. The Claimant's evidence and that of Professor Belokurov, which we accept, is that they reached an agreed handover date with Professor Gilmore, but when this was presented to Professor McMahon he rejected the date and imposed his own. Professor Belokurov described this in his witness evidence as Professor McMahon moving the goal posts.

68. The Claimant's evidence to us was that he was left with the impression that Professor McMahon's treatment of Professor Gilmore was harsh and humiliating. Moreover, the Claimant considered that by imposing his own handover date, Professor McMahon had caused the Claimant and Professor Belokurov to mislead Professor Gilmore in their discussions about agreeing a handover.

69. The Claimant's evidence to us was that because of this, he also formed the view that Professor McMahon had been unreliable and less than straightforward with the Claimant and Professor Belokurov in their discussions on succession planning; he appeared to favour some colleagues whilst punishing those he disliked; and the Claimant came to question Professor McMahon's decision making. This marked a turning point in their relationship with the Claimant losing trust in Professor McMahon (R2) as the Director, although the latter appeared unaware and continued to speak to the Claimant candidly as captured in the covert recordings that would follow.

70. The Claimant told us that he then started to make covert recordings because he did not want to be in a situation where Professor McMahon (R2) told him to do something and then later denied it (as in the Professor Gilmore retirement issue); and secondly, he did so for his protection in case Professor McMahon sought to exact revenge upon him. We accept that is how the Claimant genuinely felt at the time – as set out below we have found the Claimant, Professor Evans, to be an honest, consistent, and a reliable witness with a very precise recall of facts. There have been very strong attacks on, or criticisms of, the Claimant's credibility by the Respondents which we will address later in this judgment, however we reject them.

71. We should point out that during his oral evidence before us we also observed with Professor McMahon's (R2) manner of giving evidence that he appeared to struggle answering almost every question; going back and forth from agreeing to disagreeing with propositions; frequently changing his mind; and discussing the question and answer out loud with himself. It was suggested by Ms Reindorf that the decision making of Professor McMahon (R2) might appear chaotic, and it appeared likely to the Tribunal that is how others might reasonably have perceived his approach based upon the way in which he answered questions in the hearing before us. This is not a criticism of Professor McMahon, and as we have already noted, he suffers from PTSD and the considerable ongoing impact upon him of that condition was abundantly clear to us.

72. This has also caused us to accept part of the Claimant's rationale for starting to record his meetings with Professor McMahon – we accept that one of the reasons for doing so was because he genuinely believed that he would change his mind and go back on things they had agreed and that a record would be needed.

Opticon RadioNet Pilot ("ORP") grant

73. The ORP is a large astronomical project funded by the European Commission which has brought together 37 academic institutions. The grant proposal for the project was submitted on 16 October 2020 and the Institute signed a Declaration of Honour on 14 December 2020 which was a commitment on the part of the University to accept the ORP contract when ready. In signing the Declaration, the Institute confirmed that the information it had provided for the project was correct and complete and that it had or would have the necessary resources needed to implement it.

74. Professor Gilmore was the PI on the ORP, and the following day after signing the Declaration of Honour, on 15 December 2020, Professor McMahon (R2) included additional conditions to the Declaration of Honour with respect to Professor Gilmore's retirement – essentially if his extension was not granted then a new PI would be required or the grant would have to be transferred out of the University to another institution.

75. On 1 March 2021 funding for the ORP grant was underwritten by the funder.

76. As to the legal status of the Declaration of Honour, this is not something which we need to determine save to record that it was the Claimant's evidence that he considered it to be legally binding, as did Professor Clarke who gave evidence for the Respondents, and she told us in her oral evidence that she considered it to be a legally binding agreement.

Whiting Report

77. On 16 October 2020 Professor Gilmore filed a grievance complaint against Professor McMahon (R2) about his conduct, in particular concerning the Gaia grants. The investigation was undertaken by Fiona Whiting of B3sixty, an external consultancy, culminating in what has been referred to as the *"Whiting Report."*

78. In July 2020 Dr Gudrun Pebody had started to raise informal concerns with University, specifically Louise Akroyd the School of Physical Science's Lead HR Business Partner, and also Professor Nigel Peake as the Head of School, about the way she was being treated by Professor McMahon (R2).

79. Dr Pebody was working as an EC Contracts Manager, responsible for managing international funding arrangements. Dr Pebody's work was 90% funded by the ORP grant from the European Union, and 10% was funded by the Institute for her work on examinations.

80. The concerns raised by Dr Pebody related to alleged bullying and hostile treatment by Professor McMahon (R2), including that he was misusing his managerial power and targeting her; undermining her professionally; attempting to force her out of employment; and causing serious harm to her wellbeing. At no point did Dr Pebody raise a formal grievance.

81. Dr Pebody was also experiencing difficulties in her personal life, namely divorce proceedings. In November 2020 Dr Pebody consented to her informal concerns being considered in the investigation into Professor Gilmore's grievance by Ms Whiting.

82. The Claimant was interviewed briefly as part of this process and had reported that he had been worried about the disparity of power between Professor McMahon and Ms Moelwyn-Hughes (former Personal Assistant to Professor McMahon) and he thought it seemed to be repeating itself in the behaviour that Dr Pebody had raised concerns about, and whereas Professor Gilmore could trade blows as an equal, Dr Pebody could not.

83. The Whiting Report was delivered to Professor Nigel Peake (Head of School) as the decision maker, and on 1 June 2021 Professor Peake issued the outcome letter dismissing Professor Gilmore's grievance. The complaints against Professor McMahon were dismissed.

84. We noted that within the report it referenced some sort of dispute or disagreement between Professor McMahon (R2) and Dr Pebody and Professor Gilmore about them accessing the premises during lockdown, and Professor McMahon had accessed the University's wireless network logs ("Eduroam") to establish if both had been on site. In doing so Professor McMahon would have known the IP addresses of both Dr Pebody and Professor Gilmore's telephones and had been covertly tracking their movements on site. This is something which Dr Pebody was very concerned about at the time and she remains concerned about it now as set out in her witness statement.

85. We understand that the logs were only to be used to provide IT support and trouble shooting assistance, whereas Professor McMahon accessed them to monitor whether Dr Pebody and Professor Gilmore had been on site. The Tribunal finds this sort of behaviour suggested some sort of focus on both people by Professor McMahon, and we note that Professor Peake as Head of School agreed that this had been an inappropriate thing to have done.

86. In the outcome letter of 1 June 2021 to Professor McMahon, Professor Peake recorded that Professor McMahon had sought the suspension of Professor Gilmore as Chair of the Faculty Board due to conduct in relation to unconfirmed minutes of the Board.

87. We noted that Professor McMahon had also informed Professor Peake that he wanted Dr Pebody to be suspended from the 10% work she currently did in the Department, and that to allow her to continue presented a serious risk to the Departmental Administrator and others, and that something visible needed to be done as Dr Pebody had undermined him to others. Within the investigation process Dr Pebody had raised concerns that she feared retribution or retaliation from Professor McMahon.

88. Professor Peake explicitly cautioned Professor McMahon (R2) against retaliation, and he specifically wrote in his outcome letter:

> *"As discussed, it is important that those who have a right to make a complaint are not punished as a consequence of doing so, provided that there is scope to act if found that a complaint was vexatious or malicious. Equally, I very much agree that the Departmental Administrator is being placed in a very difficult situation, since she quite rightly needs to be assured that preparations for the examinations are in hand. I have*

recommended that a separate meeting is held to discuss Dr Pebody's role in the Department, with the help of University HR, both with respect to the grant funding and responsibility for exam co-ordination with the Department. Of course, any changes proposed to her duties will be handled through the appropriate HR process."

89. In his oral evidence to us Professor Peake admitted that the potential for retaliation had been on his "radar" at that time.

90. Very soon after that outcome decision, on 5 June 2021 Professor McMahon (R2) emailed the Science and Technology Funding Council to ask about the possibility of transferring the PI role from Professor Gilmore to Dr Walton.

91. Professor Peake had asked the Deputy Directors, Professor Challinor and Professor Reynolds to take on the decision as to Professor Gilmore's extension application to continue working past retirement. Professor Reynolds subsequently reported that Professor McMahon (R2) was opposed to Professor Gilmore's retirement extension and further that he suggested he would resign as Director if the application was supported.

92. The evidence of Ms Akroyd, the Lead HR Business Partner, was that there was a history of difficult relationships within the Institute and Professor McMahon had expressed to her, and to Professor Peake, that he was considering bringing a complaint against Professor Gilmroe and Professor Haehnelt for some time. We note that it has never been asserted that Professor McMahon ever expressed any issues with the Claimant nor that he intended to bring a grievance against him until the matters occurring below.

93. We noted the evidence of Professor Peake, by reference to the Whiting Report and other matters, that his opinion was that there had been a culture of undermining the Director within the Institute. That is not a matter which we need to decide nor to make any findings on, however the mere fact that the Whiting Report had been produced is an indicator that some relations had not been easy within the Institute.

7 June 2021 meeting

94. On 7 June 2021 the Claimant took part in a meeting with Professor McMahon (R2) which the Claimant covertly recorded. Towards the end of that meeting Professor McMahon raised the issue of Dr Pebody. After commenting that Dr Pebody was 90% employed by Professor Gilmore on the ORP he said that there was no Institute role for her.

95. We should make clear that nowhere within the transcripts of the meetings the Claimant covertly recorded did it ever appear that he was manipulating the person being recorded in order to get them to say things. The recordings appeared to us to show members of staff freely discussing matters without any element of coercion or manipulation by the Claimant.

96. After the Claimant expressed support for Dr Pebody, Professor McMahon (R2) accused her of being a bully; he said that she had bullied a colleague named David; and he said that her behaviour was unacceptable. Professor

McMahon added that Angela Macharia (Departmental Administrator) was finding it tough because academics were telling her that Dr Pebody should be employed however there was no job for her, and if she were a postdoc, or lecturer, or senior research fellow they would be encouraging her to apply for other jobs within the University.

97. After the Claimant offered to assist in looking into the alleged bullying, Professor McMahon said that Dr Pebody gets angry and he reconfirmed that she was 90% funded by Opticon, and further he said that he wanted to “zero out” Opticon because it was not a research project, rather he said it was an administration project, and if Dr Pebody was not careful there would be a disciplinary. Professor McMahon added that Dr Pebody’s work was not great and that she worked on very simple grants, and that she was working at the level of a grade 5 employee and not a grade 7. These comments suggested a great deal of hostility towards Dr Pebody.

98. Professor McMahon (R2) was asked in the hearing what he meant by zeroing out, however his evidence was unclear and difficult to follow and he appeared to disagree that it meant to cancel something. Professor McMahon told us that he had wanted to zero it out of his head but he did not explain what that meant, and we did not believe it that is what he meant at the time he originally said it back in June 2021. We find that the natural meaning of the phrase to zero something out (as in a project) was to cancel or terminate it and contrary to what Professor McMahon appears to say now, that is what he meant at the time – to cancel out that project.

99. If the project were cancelled that would inevitably have impacted Dr Pebody’s employment given that 90% of her work was spent on it.

Invitation to end of contract consultation letter to Dr Pebody – 22 June 2021

100. The University’s Ending Fixed Term Contracts policy makes provision for the process to be followed for the end of fixed term contracts, including situations where the decision on the outcome of a grant application is awaited. In the absence of a grant having been awarded or accepted it may mean that funding is not certain, therefore the policy makes it clear that in order to avoid a potential grievance of unfair dismissal claim there needs to be consultation in time, and that it would be safer to extend the contract at the last minute rather than to fail to consult.

101. Whereas it is not set out in a formal written policy document, it is also an informal practice for the University to temporarily underwrite contracts for a period of months where there is reason to believe that funding will be coming.

102. From late 2020 onwards Dr Pebody was separately witnessed by the Claimant, Professor Haehnelt and also Professor Belojurov, as appearing sad and upset on occasion, and looking as if she had been crying. The Claimant had worked with Dr Pebody on Examinations and came to the view that she was under severe strain.

103. From around Spring or Summer 2021 Dr Pebody spoke openly to Professor Belokurov about being upset at the way in which she said she

was treated by Professor McMahon (R2) indicating her belief that she was being bullied and she mentioned that she was not sleeping. At this time Professor Belokurov informed Dr Pebody that there was a serious conflict between Professor McMahon and Professor Gilmore and she risked being stuck in the middle and becoming collateral damage. Professor Belokurov's unchallenged evidence was that he had numerous interactions with Dr Pebody from Spring or early Summer 2021 where she appeared sad, anxious and visibly distressed, and that by early July 2021 she seemed to be in an even worse state. Dr Pebody's distress about her contract extension was witnessed additionally by Professor Haehnelt around that time as well.

104. Whereas funding for the ORP grant had been underwritten by the funder since 1 March 2021, on 22 June 2021 Joy McSharry (administrator) emailed Dr Pebody. The subject line of the email was: *"Invitation to consultation meeting with regard to the end of your open ended contract."*

105. The attached letter was sent in the name of Ms Macharia (Departmental Administrator), and it stated:

> *"As you are aware the funding for your contract is due to cease on 30th September 2021. As a result of this we need to consult with you about your position.*
>
> *…*
>
> *During this consultation period I would be happy to offer whatever assistance I can in helping you to find a new position."*

106. The letter included various links to careers guidance, training and vacancy websites and it further recorded that she may need to attend interviews during working hours which would be supported, and finally:

> *"I would like to wish you every success in your search to find a suitable opening and to take this opportunity to thank you for your contribution to the Institute of Astronomy."*

107. The letter was not of itself terminating the employment of Dr Pebody, however the clear message behind it was that this was a potential outcome. Receiving a letter like that would cause concern to many people, and in the case of Dr Pebody she was already distressed at work, and this exacerbated it. Whereas the University has described this as a routine letter, it may very well be routine to send the letter, however it may not necessarily be routine to receive it.

108. There is a dispute of facts between the parties as to whether the letter ought ever to have been sent at all and whether there was funding for ORP in place or whether it was on its way. It was clear to the Tribunal that the letter was sent in error as the funding was already in place, and had been since 1 March 2021, and all that was required was for Professor McMahon (R2) to complete an administrative X5 form to accept the grant funds, in which case the letter would not have been sent.

109. We make it clear there is no criticism at all of Ms McSharry who had sent the letter as she would have been under the impression the funds were not in place, thus according to the policy that consultation letter needed to be sent in time. We are also clear that Professor McMahon (R2) did not direct that letter to be sent, however it was due to his inaction, as will be seen below, that the letter ended up being sent to Dr Pebody by Ms McSharry.

110. Dr Pebody was alarmed by the letter and her evidence to us was that the funding was in place, or should have been in place, and therefore the letter should never have been sent. The Claimant is also of that view however he was not aware of the letter having been sent at that time.

111. Professor Gilmore as the PI on ORP was made aware by Dr Pebody that she had received the letter, he clearly did not agree that there was a funding issue or that the letter should have been sent as he immediately wrote to Professor Peake and Ms Macharia (copied to Dr Pebody) to challenge it and he said that it was inappropriately negative and unhelpful and that funding was in place to support Dr Pebody until 28 February 2025. Professor Gilmore asked why it had been necessary to place Dr Pebody in this needlessly stressful situation, and moreover he said that as he was the PI he should have been involved beforehand as he had been on another similar issue with someone else.

112. It appeared that Professor Peake and Ms Akroyd (from HR) were also confused as to why the letter had been sent as their emails over 23 and 24 June 2021 record their disbelief, and their view that funding was available. Professor Peake described it as coming to him as a surprise and *"absolutely inexplicable"* and Ms Akroyd opined that perhaps they (we understand to mean Ms McSharry and Ms Macharia) had done so based on the ending of one grant whilst forgetting that Dr Pebody was fully costed to another one.

113. Professor Peake's evidence to us on this matter was not entirely candid. In his witness statement Professor Peake described this as a routine letter, however we did not find that was consistent with expressions of surprise at the material time, moreover during a later meeting with the Claimant on 26 July 2021 he appeared to agree the letter should not have been sent. Whereas it may be a routine letter if the circumstances justified it, we did not consider it routine to warn someone about the potential end of their employment where the funding was in place which would have allowed their employment to continue, and thus the letter would not needed to have been sent in the first place. That did not appear to the Tribunal to be a routine matter at all.

114. Professor Peake was asked in his oral evidence why his statement did not refer to his emails of 23 and 24 June 2021 describing the letter as a surprise and absolutely inexplicable. Professor Peake's evidence to us was that he did not know why he missed it and it was not deliberate. It did seem peculiar to the Tribunal that Professor Peake would choose to tell us that the letter was routine, having expressed such surprise at least twice at the material time. We formed the view that this was intentional as it sought to mask the fact that the letter had been sent in error, and moreover it masked how that situation had come to pass in the first place. Professor Peake, like most of the Respondents' witnesses, was very cautious about saying

anything in evidence which could potentially be detrimental to the University.

115. Ms Akroyd wrote to Ms Macharia explaining that funding was available but even if it had not been it would have been helpful to have spoken to the individual in the first instance so that they would understand the context. Ms Akroyd added that this would be particularly the case where there are significant sensitivities.

116. On 25 June 2021 at 2:27am Ms Macharia asked Professor McMahon (R2) for her to be removed from the matter for her own mental wellbeing and conscience, and she said that he had the pertinent information and accountability.

117. Professor McMahon replied to Ms Akroyd and said he was also concerned about Dr Pebody's mental health and vulnerability which he said was as a result of Professor Gilmore's email, and he said that the mental health of Dr Pebody and the influence of Professor Gilmore on her were highlighted as areas of concern in a recent investigation, and he did not feel they had expertise or the bandwidth to address it at the current time. The Tribunal understands that Professor McMahon was referring to the Whiting Report.

118. Professor McMahon (R2) also said that Professor Gilmore's email was misleading about the status of future funding because there was uncertainty from 1 October which he indicated was due to the outcome of Professor Gilmore's request to continue working beyond retirement. Professor McMahon maintained that Dr Pebody's role was at risk of redundancy and there was a statutory requirement to follow the notification process hence the 14 week invite to consultation stage letter.

119. Professor McMahon was questioned about this issue in his oral evidence and he was asked if he accepted that it was always the case that funding was available for Dr Pebody's role, to which he confirmed that funds had been available with effect from 1 March 2021.

120. An email from Ms Akroyd to Professor McMahon (R2) later that month on 29 June 2021 disagreed with his view; she challenged why Dr Pebody's funding was at risk dependent upon the outcome of Professor Gilmore's request for a retirement extension; and she stated her understanding that funding was available and even if Professor Gilmore could not continue then the options were to find a new PI or to transfer the grant to another institution in which Dr Pebody's employment would transfer with it – and in neither situation should Dr Pebody's role be at risk of redundancy.

121. Ms Akroyd added that there was a question of whether the invitation letter ought to have been sent and the consultation process begun, and if even funding was awaited it would have been advisable to have spoken to Dr Pebody first. We were not referred to any response from Professor McMahon to Ms Akroyd.

122. Professor McMahon continued to be chased to sign off the X5 form to accept the grant which would have resolved Dr Pebody's employment

issue, however he said it required his approval as head of department and he would not be delegating it.

123. On 11 July 2021 Professor McMahon contacted the European ORP coordinator Professor Jean-Gabriel Cuby and said that the University was reviewing its level of involvement in the project since Professor Gilmore had a retirement date of 30 September 2021, and the University had requested that he review the project since they were concerned that the submitted proposal made a commitment that the Institute could not meet and a risk assessment was being carried out.

124. The above statement was untrue – no-one within the University had asked Professor McMahon to do anything of the sort. Professor McMahon had taken it upon himself to do so – it was at his own instigation, moreover no decision had been made at that time about the retirement date. The Tribunal also noted Professor McMahon's request to Professor Cuby *"Please do not contact Gerry Gilmore or Gudrun Pebody about this topic."*

125. Professor McMahon (R2) forwarded the above exchange to Ms Akroyd where he suggested presenting Professor Gilmore with three options including that Dr Pebody work 100% of her time on ORP project thus giving up 10% of her Institute or departmental duties, which Ms Akroyd cautioned against. Professor McMahon then replied to Ms Akroyd and Professor Peake in which he said that he would not mention the redeployment of Dr Pebody and *"I can assure you all that I would not want to risk our efforts."*

126. On 14 July 2021 Professor McMahon wrote to Ms Macharia about the Whiting Report in which he said it had exonerated him and "*I now have a mandate"* and he suggested a meeting between him, Ms Macharia, Ms Akroyd and Professor Peake to discuss the way forward regarding Dr Pebody.

127. Around this time the Claimant worked alongside Professor McMahon and two other Professors as Senior Examiners for the Part III exams, and Dr Pebody provided support. The Claimant's evidence, which we accepted, was that he observed Professor McMahon blaming Dr Pebody for issues, including and questioning her work with the other examiners. Professor McMahon had queried Dr Pebody's travel expenses and her purchase of an iPad to help with the exams work.

128. In his evidence to us Professor Challinor (the former Co-Deputy Director) expressed concern at the amount of scrutiny of Dr Pebody in this regard by Professor McMahon as it was a little amount of expenditure for something mission critical therefore it was strange to have been that level of scrutiny or attention, and it ought not to have been questioned.

129. The Claimant as Senior Examiner drafted the examiner's minutes which included the following expression of gratitude for Dr Pebody's help:

> *"Within the Institute of Astronomy, the superlative efforts of Dr Gudrun Pebody have been vital in allowing the examination process to run successfully."*

130. However, on 14 July 2021 Professor McMahon asked to make a confidential correction. This was discussed at a meeting between the Claimant and Professor McMahon on 16 July 2021 where the latter sought to remove the above sentence, suggesting that it would somehow to be fairer to other support staff. In the end the only thing removed was the word *"superlative."*

131. Professor McMahon also criticised or downplayed the value of the ORP which funded Dr Pebody's role as he said it was of no scientific value to the Institute and did not relate to its scientific strategy, even though he had approved the Institute's involvement via the Declaration of Honour some six months or so earlier.

132. The Claimant encouraged Professor McMahon at the meeting to approve the X5 form. However later that evening Professor McMahon sent an amended spreadsheet proposing to make changes to the grant which were made at a very late stage and would have depended upon actions from the other institutions involved. These changes included removing 12 months of funding which could have impacted Dr Pebody's role, as well as reallocating funds between institutions requiring them to revisit their own budgets.

133. The Claimant viewed this as Professor McMahon creating a set of new obstacles and that he was intervening without authority in another colleague's work with no technical expertise, and contrary to what he said Professor Cuby had told him the day before on 15 July 2021 that the grant had to be accepted as it stood.

First alleged Protected Disclosure – 20 July 2021

134. The matter reached a critical point on the weekend of 17 and 18 July 2021 as Dr Pebody became more distressed about the ongoing situation with her employment. Dr Pebody was observed by the Claimant to be in a visibly miserable state, and that she was crying uncontrollably and had become, in the view of the Claimant, a shadow of the person she had been a year earlier and he noted she had not been sleeping and appeared him to be close to breaking point. Dr Pebody had been sending the Claimant repeated emails throughout this period which he said caused him concern about her mental state.

135. The Claimant emailed Professor McMahon (R2) over the weekend to urge that he accept the ORP grant "for Gudrun's quietude of mind" and whereas Professor McMahon agreed to take part in a Zoom call on 19 July 2021, he did not join and said he would email the following day. We understand the reference to accepting the ORP grant to mean signing off the X5 form.

136. On 20 July 2021 the Claimant again emailed Professor McMahon to insist that he send him the X5 form for him to approve as he said he would become the PI or joint PI on the ORP grant. Professor McMahon did not do so. It is unnecessary for us to resolve whether the Claimant was ever going to become the PI on ORP, the key issue is that he had taken it on himself to try and move matters forward and to get the X5 form signed to resolve what he saw as Dr Pebody's continued distress. There did not

appear to be any benefit to the Claimant in raising this matter as he had nothing to gain from his intervention.

137. The Claimant then contacted Professor Cathie Clarke as the Institute's Wellbeing Advocate to express concern about Dr Pebody's distress, and she suggested the Claimant contact Professor Peake as the Head of School and also because he had been the Responsible Officer for the Whiting Report. Professor Clarke said words to the effect that she had heard that Dr Pebody was in a very bad place and could be in need of urgent help.

138. Contrary to the University's case, it should be noted that the first place the Claimant went to for support was to the relevant Wellbeing Advocate, rather than escalating it up the management chain. This tended to suggest to us that the Claimant had a genuine concern for Dr Pebody's wellbeing. A few days later (on 26 July 2021) Professor Clarke reached out to the Claimant to check that he had been able to get support for Dr Pebody and if he needed anything further to which he replied that she was doing to deal with the people she trusted. Professor Clarke had clearly appreciated that there was some sort of risk to Dr Pebody's health or wellbeing.

139. On 20 July 2021 the Claimant sent the following email to Professor Peake which is reproduced in full below as it is alleged to be the first protected disclosure. The Claimant wrote:

> "*Dear Nigel Peake,*
>
> *I am writing to you because I am very concerned about Gudrun Pebody. She seems to me to be in a fragile state of mind. (We have been interacting a lot over the examinations and the ORP grant).*
>
> *She is a valuable member of staff at the Institute of Astronomy, and of course we owe her a duty of care -- as we do for all our Cambridge colleagues. Gudrun believes that the Director of the Institute of Astronomy is trying to make her unemployed.*
>
> *She has good reason. There is indeed overwhelming evidence that the Director is planning to make her unemployed, as part of a personal vendetta.*
>
> *Regrettably, the IoA has a terrible record of support for female administrative staff.* [Employee A] *committed suicide, Ginny Bennett was hounded out a job (the Department had to pay her compensation). Alex Moelwyn-Hughes also came to believe that Richard McMahon was trying to sack her & left a frightened woman. Mary Howe too has her story of aggressive Professors at the IoA.*
>
> *There is a bad history of misogyny to female administrators at the top of the IoA. I am terrified of history repeating itself here.*
>
> *Perhaps this is out of an abundance of caution, but in these matters, it is better to be cautious ... and compassionate.*

Best Wyn Evans"

140. At the time of writing this email the Claimant had not been aware that Dr Pebody had already been sent the invitation to the end of contract consultation letter signed by Ms Macharia, however he was aware from Dr Pebody of her concerns that her employment was not going to continue after the end of September 2021. The email from the Claimant was sent over a month after the zero out comment had been made to him by Professor McMahon (R2) on 7 June 2021, but shortly after the weekend where Dr Pebody had been emailing him in a distressed state.

141. Employee A's name has been redacted by the Tribunal in order not to cause distress to her family, and she was employed as a Director's Personal Assistant in the Institute. The Claimant says that she took her life due to distress in her professional and personal life. The Respondents, in particular Professor Clarke, disputes this based upon alleged comments from her husband that she had no issues at work.

142. This is not a fact we can now resolve save to record that we understand that Employee A had enjoyed her role with the Respondent but she had experienced difficulties in her private life, and immediately before she took her life she had started a new role and she was not enjoying it as much as her previous role.

143. We cannot make any findings beyond that based on the limited evidence we have heard on the issue. Accordingly, whereas we can never know what were the precise causes of that tragedy, the Claimant appeared to us to have genuinely believed that work played some factor in the overall mix.

144. The Claimant's evidence to us was that the event should have underscored the need for greater care and compassion in supporting female administrative staff within the institute and he was acutely aware that matters may be about to repeat. The Claimant said the suicide of Employee A was never discussed within the Institute and nor were a series of other bullying incidents targeting especially female professional services staff over the past decade, which he described as a cycle of misogyny which kept repeating because the incidents were not acknowledged and far less discussed or investigated by HR.

145. Professor Peake's evidence to us was that the University attaches considerable importance to the matter of health and safety, and further that the Claimant's email had been an exceptionally serious email to have received, and would warrant immediate action. We understand that the University has in place a policy or policies on wellbeing, we have not been provided with copies of them but we have no reason to assume they do not exist in such a large organization as this one.

146. Professor Clarke gave oral evidence to us on the allegations of systemic misogyny within the Institute. The evidence of Professor Clarke was that she considered the Claimant not to be speaking for her and others; the portrayal of the Institute as misogynistic was betraying the hard work of generations of staff, and she felt personally indignant as a female astronomer at that portrayal.

147. We make it clear, again, that it is not our purpose to decide whether there is a culture of misogyny within the Institute. The Claimant argues strongly that there is, Professor Clarke argues strongly that there is not. We simply record that it is entirely possible for a male member of staff to reasonably believe that a culture of misogyny exists in a workplace whilst at the same time a female member of staff working in that same place does not.

148. Within the hearing the Claimant became visibly distressed when discussing the death of Employee A and the risk to Dr Pebody's health. It was put to the Claimant in the hearing, and again raised in the Respondents' closing submissions, firstly that he was shedding crocodile tears and secondly that he had weaponised the death of Employee A (and by extension the distress of Dr Pebody) to use for his own purposes. These were very serious allegations to make which the Claimant resisted.

149. As we have recorded, Ms Reindorf KC conducted herself professionally throughout the case and was only acting on her clients' instructions, however these were very strong accusations to have levied against the Claimant, and we have not been persuaded that they were true.

Second alleged Protected Disclosure – 21 July 2021

150. The Claimant received an out of office message from Professor Peake, therefore he forwarded his email to Kaitlin Birrell (HR Adviser, School of Physical Sciences) the following day at 8:25am as he told us that he was still extremely worried.

151. Professor McMahon had been engaging with Professor Reynolds (joint Deputy Director) about the delays in signing the ORP grant. Professor McMahon had queried the possibility of accepting the grant and then forcing a change of PI. Professor Reynolds wrote back to Professor McMahon at 10:43am on 21 July 2021 advising against such a step as it appeared to him to violate the principle of academic freedom.

152. At 12:31pm Professor McMahon emailed Professor Gilmore to say he had been undertaking consultations relevant to ORP and he would email proposed changes he required to be made to the X5 form before he could consider approving it which he hoped to do by the end of the next week.

153. Professor McMahon said that his understanding was that the delay in the University signing did not affect the transfer of funds; he hoped to be able to confirm within the next two weeks that there would be funding to support Dr Pebody from 1 October 2021; and he asked Professor Gilmore to update her and to apologise on behalf of the Department for the understandable anxiety caused to her due to several issues outside of their control.

154. Professor McMahon forwarded the exchange to the Claimant minutes afterwards thanking him for his time and input as part of his consultations about the ORP.

155. At 12:49pm on 21 July 2021 Professor McMahon responded to a query from Ms McSharry and asked her to pause the end of contract process as

there was uncertainty over funding which he hoped would be resolved in a few weeks.

156. At 4:12pm that day Ms McSharry informed Dr Pebody that the end of contract process had been paused and she apologised for the uncertainty which she said was due to a number of issues.

157. Later on 21 July 2021 Professor Reynolds (the joint Deputy Director) emailed Ms Macharia and Professor Challinor (the other Deputy Director) to express concern about Professor McMahon's handling of the grant, and said that his proposed actions were in conflict with the principles of academic freedom which they held to be sacrosanct; and that Professor McMahon was in danger of making his directorship untenable. Professor Reynolds had already expressed concerns of this nature to Professor McMahon earlier that morning. Professor Reynolds confirmed to us in his oral evidence of his concern that Professor McMahon was exceeding his authority.

158. On 25 July 2021 the Claimant prepared an addendum to the examiner's minutes to record concerns about Professor McMahon's behaviour and these were agreed with Professor Sijacki and sent to Professor Christopher Tout as Chair of the Teaching Committee.

Third alleged Protected Disclosure – the Delays Document – 26 July 2021

159. At 9:13am on Monday 26 July 2021 the Claimant and Professor Haehnelt informed Ms Macharia of their intention to add a reserved business agenda item to the Staff Committee meeting of Wednesday 28 July 2021. The item was entitled Delays to the Signature of the ORP Grant and has since been referred to as the "Delays Document"

160. The Claimant drafted the Delays Document with some input from Professor Haehnelt and Professor Gilmore who also put their names to it. The objectives as recorded in the document were for the department to agree to underwrite Dr Pebody's salary until the ORP grant was signed by the Director, and for the Director (Professor McMahon) to apologise for sending the End of Contract letter.

161. Within the Delays Document the Claimant disclosed that Professor McMahon had held up the ORP grant for over 37 weeks after approval of the grant on 3 November 2020 and he had still not given his assent; that he had embarked on a major rewriting of a number of grants including the ORP grant and that this was a substantial and far reaching overreach beyond his powers as Director; that he had produced further conditions including multiple budgetary and personnel changes which could not now be changed without the permission of all the European partners which was not feasible at that stage; and that he reneged on an agreement with Professor Gilmore that the Claimant would take over as PI on the ORP if his application to work beyond retirement was not approved.

162. By this stage the Claimant had become aware of the invitation to consultation letter sent to Dr Pebody, as he referenced it in the document.

163. The Claimant said that there had been very serious consequences of the delays on personnel employed on the ORP particularly Dr Pebody who had been sent an end of contract letter by the department, effectively announcing the termination of her employment which the Claimant described as making clear she must look for another job whilst she was fully engaged in providing examination support under nearly impossible circumstances. The Claimant said that funding was in place for the continuation of Dr Pebody's position for 4 years, and it was Departmental policy to avoid the sending of such alarming "End of Contract" letters when funding is in place as the Department had routinely underwritten grants when grant announcements were delayed, including with the Gaia grants.

164. The Claimant referenced the aforementioned policy on ending fixed term contracts, which he said detailed the rules on the duration of an underwrite to avoid "end of contract letters" and he said that in Dr Pebody's case it was at least 6 months underwrite to meet minimum University conditions (as was done for the Gaia staff). We record that the Claimant may have confused that written policy which does not seek to avoid end of contract letters, and instead had in mind the practice of underwriting employment where it was believed that grant funding was imminent.

165. The Claimant added that it was discriminatory to treat one employee in a completely different way to all the others and that the University's employment policies must be applied consistently and uniformly, not in a fickle or arbitrary manner. Whereas the Claimant said that they believed that the way Dr Pebody had been treated raised extremely serious concerns that were not suitable for general discussion, even under Reserved Business at a staff meeting, no further detail was provided.

166. The Claimant did not suggest discrimination by reference to a protected characteristic, rather we took it to mean simply treating someone differently to others, and thus unfairly.

167. The Claimant says that the overwhelming motivation for the document was due to grave concern for Dr Pebody; and because it was had been impossible to negotiate with Professor McMahon quickly and in good faith; and also because it had been impossible to get Professor Peake to intervene at all, even though he was Professor McMahon's line manager and could have directed him to sign the X5 form.

168. During our hearing the Claimant was questioned about what failings he argued the Delays Document tended to show. The Claimant's evidence was firstly with respect to the potential for Dr Pebody to be unfairly dismissed and he described Professor McMahon as monomaniacal about getting rid of her.

169. In addition, the Claimant's evidence was that the information tended to show a breach of the Declaration of Honour and he asserted that Dr Pebody's employment on the project was a mandatory term of the Declaration of Honour and a breach of this would lead to a termination of the grant and the return of the grant.

170. The Declaration was not referenced within the Claimant's witness statement as being the legal obligation and the Respondents' have accused

him of making it up on the spot during his oral evidence. We do not draw that conclusion. Once the Declaration was disclosed by the Respondents and shared with us it demonstrated, as the Claimant said in evidence, that it recorded that the University had agreed that the facts it had disclosed in the grant were accurate and that it would have the resources needed for the project. Professor Clarke agreed that the Declaration of Honour was a legal obligation.

171. Whereas the Claimant was in error as Dr Pebody's name does not feature in the Declaration of Honour or the Grant Agreement, however her role does appear within the associated documents / spreadsheet as being part of the team working on the grant, and as we have already identified, the University had agreed in the Declaration that it would have the resources needed. The Claimant had not been specific about the Declaration earlier, however we find he did have in mind its terms at the material time.

172. The Delays Document was previously shared privately with Professor Belokurov, Professor Sijacki and Professor Clarke for comment. Both Professor Belokurov and Professor Sijacki were supportive of the document as they had been worried about Dr Pebody's mental state. Professor Belokurov also said in his witness statement that the Claimant appeared to be very seriously worried about Dr Pebody's state and mental health and his main motive was to try and help her as fast as possible because her condition was deteriorating and had become truly worrying. This evidence was unchallenged by the Respondents.

173. Professor Clarke appeared to endorse the document as well, indicating that it was a very legitimate topic for debate within Reserved Business, however she took issue with some of the wording.

174. The Claimant shared the Delays Document with the Deputy Directors, Professors Challinor and Reynolds on 26 July 2021 and this is alleged to be the Third Protected Disclosure.

175. At 9:45am on 26 July 2021 the Deputy Directors attended a Zoom meeting with Ms Macharia without Professor McMahon who was on leave at the time. The notes of the Zoom call record that they discussed the ORP delays and Dr Pebody's letter; the Deputy Directors expressed that there were issues of academic freedom at play and they considered that the real substance of the Claimant's allegations were not the details of the grant but instead were wider claims of bullying. Ms Macharia expressed that the Dr Pebody issues must be separated off and could not be the subject of a staff meeting discussion, and they further discussed Dr Pebody's well-being. Professor Reynolds has confirmed that the notes of this meeting provided the main agenda for the subsequent meeting with Professor McMahon which occurred on 27 July 2021.

Fourth alleged Protected Disclosure – 26 July 2021

176. The Claimant shared the Delays Document with Ms Macharia and Professor Peake on 26 July 2021 and this is alleged to be the Fourth Protected Disclosure.

Fifth alleged Protected Disclosure – 26 July 2021

177. The Claimant met with Professor Peake and Ms Birrell on 26 July 2021. The Claimant said that the reason for sending his email of 20 July 2021 was because he was very, very concerned about Dr Pebody. The Claimant referenced Employee A whom he said had killed herself due to confluence of difficulties in her personal life with a toxic environment at the Institute of Astronomy, and he said that Dr Pebody was going through a messy and bitter divorce and there was a highly toxic environment at the Institute, and he expressed his concern that things might end up like either Employee A or another employee, Virginia Bennett, and he said the department would be paying a sum of money to Dr Pebody.

178. The Claimant informed Professor Peake that when he sent the email, directly after 17 and 18 July 2021, Dr Pebody was not sleeping; she was repeatedly emailing him trying to comprehend what had happened to her; she was tearful, withdrawn and depressed; and her distress had been witnessed by several other staff members. The Claimant said that he thought that she had been treated with unconscionable cruelty by Professor McMahon (R2).

179. The Claimant went on to assert a power imbalance between Professor McMahon and Dr Pebody and that she desperately needed money that had been gotten for her to be signed off by the Director (Professor McMahon); and he repeated that she desperately needed her contract signed off.

180. It was at this time that the Claimant informed Professor Peake that he had been making recordings of meetings with Professor McMahon as he had been worried for his own safety, and that the recordings contained statements that Professor McMahon did not intend to sign the Opticon contract with the aim of making Dr Pebody redundant.

181. That is not precisely what Professor McMahon had said, he had in fact minimised the value of the ORP and expressed he had wanted to zero it out, and he had acknowledged that was where Dr Pebody was working 90% of her time – therefore Dr Pebody may very well have found herself redundant. We did not draw a negative inference from this as the Claimant admitted to having made a recording and he said he had not listened to it by that time, therefore he was not seeking to hide anything nor to mislead anyone. It appeared to us to be a case of simply misremembering the exact words and nothing beyond that.

182. The Claimant went on to add that Dr Pebody had grounds for constructive dismissal; there had been significant grounds for aggravated bullying; and he said that when he sent his email of 20 July, he had been seriously worried that she might self-harm as that was due to how serious and depressed and withdrawn she had become.

183. The Claimant said that at the end of the meeting he had with Professor McMahon (on 16 July 2021) they had reached agreement and he would approve the grant, however afterwards he sent further conditions which were impossible to satisfy at that late stage, including personnel and budgetary changes.

184. The Claimant stated:

"What is consistent with what is in the earlier recordings, is that Richard doesn't want to accept this grant; he wants it delayed and delayed and delayed until Gudrun is made redundant."

185. The Claimant added that Dr Pebody had begun to improve following discussions with the Claimant about the steps he was taking, and he did not think that she was in immediate danger of self-harming but it would be some months before she was fully recovered. The Claimant agreed it would be suitable for Ms Birrell to check in with her. There were other occasions where the Claimant expressed concern as to who from the University would contact Dr Pebody and he suggested that she was getting support from those she trusted.

186. Professor Peake expressed surprise about the things the Claimant alleged Professor McMahon had said, and commented that this was not something Professor McMahon had said to him, and it would be highly unusual and irregular and strange to send the money back and a departure from usual University practice, and he had understood the grant had already been renewed and the end of contract letter should not have been sent to Dr Pebody.

187. Professor Peake also added that his strong preference was for Professor McMahon to do what he had been told would happen all along which was to accept the money and then Dr Pebody would be transferred to Opticon probably 100%. Professor Peake was clear that the funding was there from Opticon, it had been applied for, it had been awarded, and it should be accepted, and that should be confirmed as soon as possible, which would be a step forward.

188. It was Professor Peake who mentioned the earlier Whiting Report to which the Claimant said he had given evidence and warned that Dr Pebody would need protection from bullying and that everything he had said had come to pass. Professor Peake told the Claimant that he was right and that people always have the right to make complaints, but they should not suffer consequences from having done so and that was one of the reasons why he was very disappointed that the end of contract letter had gone out to Dr Pebody.

189. Professor Peake indicated that Professor McMahon's behaviour would have to be looked into but he was not sure on the mechanism, to which Ms Birrell replied that a formal complaint from someone would be needed in order to deal with things formally. The Claimant responded that the material in the University's possession should be sufficient and he said he did not trust Professor McMahon and suspected that he would go after him next. The Claimant repeated a number of times his view that Professor McMahon should step aside or step down pending an investigation.

190. Professor Peake described the putting the Delays Document to the staff meeting as "the nuclear option." The Claimant agreed not to issue the Delays Document to the staff committee in return for Professor Peake agreeing to speak to Professor McMahon the following day and having had an opportunity to sign the X5 form. Professor Peake told the Claimant that this was immensely good of him and very generous.

191. In his witness statement Professor Peake says that presenting such information in a public way in front of Professor McMahon's colleagues was ill conceived and the wrong thing to do, and extremely inappropriate, and aggressive. That may be what Professor Peake says that his view is now, in the midst of a Tribunal hearing, however it is not something he expressed at the material time. Whereas Professor Peake referred to it at the time as the nuclear option, he only took issue with the use of the word "capricious" in the Delays Document which the Claimant agreed to remove. Professor Peake did not tell the Claimant at the time that he considered his actions to be extremely inappropriate and aggressive, and it appeared to the Tribunal that his expressed view now is not what he believed at the time. It appeared that this had been included in order to discredit the Claimant.

192. Within his oral evidence Professor Reynolds confirmed that staff have a right to raise issues which concerned academic freedom, save that he said whether it was wise was a different matter. Professor Challinor gave similar candid evidence that academic freedom is regarded as sacrosanct and therefore if a director was seeking to interfere by demanding a change of PI without a good reason, it would be appropriate to raise concerns at a staff committee meeting.

193. During the meeting the Claimant was asked by Ms Birrell if he was recording that meeting and he denied that he was, however that was not true and he did make a covert recording of the meeting. Professor Peake said that it would not have bothered him if the Claimant had been recording the meeting but it is very important not to say anything that you are not prepared to have repeated later. In any event we have the benefit of a transcript of the discussion.

194. Professor McMahon would later go on to accuse Claimant of weaponising Dr Pebody in order to undermine him. Professor Peake was questioned about this during his oral evidence to us, and he was asked whether at the time he would have found such an allegation to be incredulous or astonishing, to which he replied he would want to know what evidence there was.

195. During the meeting the Claimant referred on a number of occasions to the likely fall out if the Delays Document were released as he said that bullying was of great interest to the press; bullying at Cambridge University would be newsworthy; bullying had become a hot topic in astronomy; and there were dangers in releasing the document as it would provoke an enormous row and huge rage as well as cause reputational damage. It appeared to the Tribunal that the Claimant was seeking to compel Professor Peake to take some action to secure Dr Pebody's employment situation.

196. Later that day Professor Peake met with the Deputy Directors, however his witness statement provides scant details as to what was discussed save that he told us that the Deputy Directors expressed their concern about the atmosphere within the Institute and the pressure being put on Professor McMahon. This did appear to the Tribunal to be a heavily abridged version of what would likely have been quite an important discussion.

197. On 26 July 2021 at 12:09pm the Claimant sent the Delays Document to Professor McMahon and wrote:

> *"I think it is appropriate to send you this document regarding the agenda item on reserved business for the Staff Committee meeting on Wednesday.*
>
> *Martin & myself have already circulated it to the Deputy Directors, and sent it to Angela for upload on the meeting Moodle."*

Sixth alleged Protected Disclosure – 26 July 2021

198. The Claimant and Professor Haehnelt met with the Deputy Directors Professors Reynolds and Challinor later on 26 July 2021. Whereas the Deputy Directors were initially of the view that the invitation to consultation letter sent to Dr Pebody was standard and generated automatically, this was countered by the Claimant and Professor Haehnelt, following which Professor Reynolds said that he wished the Department had underwritten her position in the same way as the Gaia team had been underwritten.

199. Although the Claimant said that there were things the Deputy Directors did not know and that he could not tell them (which we understood to be his covert recordings), the Claimant stated that there had been an inconsistency in the treatment of Dr Pebody with respect to the issuing of the letter; the Claimant said that they must have employment practices that are consistent; and he said that checks had been made to see whether funding was available for a colleague (now known to be Dr Semyeong Oh) before the consultation letter had been sent out.

200. Whereas it was Professor Haehnelt who said that there was extreme concern about the well-being of Dr Pebody, and it had become so acute and every day mattered, the Claimant agreed and said that she was in a very bad way.

201. The Deputy Directors asked about the purpose of the Delays Document, Professor Haehnelt told them it was to get agreement about underwriting the role and to remove the threat of dismissal [from Dr Pebody]. The Claimant again mentioned the potential fall out if the Delays Document were to be circulated. The Deputy Directors indicated that they would meet Professor McMahon the following day on the matter of Dr Pebody's contract. There was a brief discussion about the status of the ORP grant which Professor Haehnelt said had started on 1 March and that the grant should have been approved immediately as the money was there and the form X5 signing was usually a non-event.

202. The Claimant referred to Professor McMahon seeking to amend the examination minutes and removing the sentence where he thanked Dr Pebody for her work; that he had been openly unsupportive of her during the examination process; he undermined her and expressed a lack of confidence in her work including by sending an email to all the examiners explicitly questioning her work in transcription and checking of the marks.

203. The Claimant then discussed the allegations contained within his email of 20 July 2021 to Professor Peake, and specifically he informed the Deputy

Directors that Professor McMahon had made it explicit to him that he wanted to make Dr Pebody redundant and to zero her out. When asked by Professor Reynolds if he had asked Professor McMahon why, the Claimant replied that *"it was completely obvious from the context of the conversation that he loathed Gudrun and he wanted to make her redundant."*

204. After the Claimant mentioned the state of Dr Pebody's health by reference to her not sleeping for two days, sending repeated emails through the night trying to process what was happening to her, and a suggestion she should speak to her lawyers, Professor Reynolds stated that *"We are going to have some very very frank conversations with him and impress on him just how serious this is and how immediate action is needed."* Professor Haehnelt expressed concern that Dr Pebody would break down and they didn't know how badly but at some stage she would recover, and he asked them to keep timescales in mind so that she did not break down. Professor Reynolds stated it was a moral imperative to help Dr Pebody and to protect her mental health.

205. Professor Haehnelt repeatedly asserted that time was of the essence for Dr Pebody. It was clear that Professor Challinor understood both the Claimant and Professor Haehnelt to be raising serious concerns for Dr Pebody's health as he is recorded as having stated:

> *"…So there clearly are extremely serious allegations that you're making, and I have heard things today that, if they are substantiated, are absolutely shocking and completely unacceptable. But I'm also hearing that we've got a staff member who we have a duty of care for, who is in an incredibly fragile state, where there's something we can probably do that would help, which is to secure her position…"*

206. Professor Challinor queried whether it would be appropriate to circulate the Delays Document if they were able to quickly secure underwriting of approval of the grant to which Professor Haehnelt suggested that wider circulation may not be necessary if the problem were solved quickly.

207. The Claimant also stated in the meeting that he had been alerting others due to his worry about Dr Pebody's mental stability.

208. Later in the meeting the Claimant discussed whether Professor McMahon should remain as Director pending an investigation or step down for a period, and he said that the Deputy Directors had been presented with serious allegations of bullying, and these were very serious allegations that had taken someone to the edge of mental health.

209. The Claimant's evidence to us was that the sole purpose of the Delays Document was to secure a resolution to Dr Pebody's contract position and they considered the situation to be urgent given the risk of potential unfair dismissal and a further serious impact on her deteriorating well-being, and they also regarded these matters as raising issues of public interest.

210. The Claimant was questioned about the public interest in the hearing before us, he denied that the things he was raising were about internal politics, and his evidence to us was that the improper sending of the end of

contract letter together with the breach of the Declaration of Honour by changing the requirements of the grant and those obligations, as well as the health and safety of Dr Pebody were all interconnected.

211. The Claimant reminds us in his witness statement that neither Professor Reynolds nor Professor Challinor suggested that the Delays Document constituted bullying of Professor McMahon, rather he says it was a measure of last resort intended to prompt collective action by staff in circumstances where those with the authority to intervene, such as Professor Peake, had not done so.

Events of 27 July 2021

212. Following the meeting between the Deputy Directors and Ms Macharia on 26 July 2021, Professor Challinor wrote to her at 7:42am the following day where he said that following the meeting the day before with the Claimant and Professor Haehnelt:

> *"…it is very clear that we cannot avoid talking about Gudrun in today's meeting with Richard. As we suspected, the ORP concerns are really a proxy. The core complaint concerns Richard's behaviour towards Gudrun in recent months, and the urgency of the complaint is fuelled by reports of Gudrun's deteriorating well-being."*

213. On the morning of 27 July 2021, Professor McMahon and Ms Macharia attended a pre-arranged meeting with B3Sixty to discuss resolving conflict at work. We understand that this was Professor McMahon's first day back from annual leave.

214. At 10:30am Professor McMahon attended a meeting with the Deputy Directors, Professors Challinor and Reynolds, and also Ms Macharia.

215. At 10:31am that day the Claimant wrote to Professor McMahon as follows:

> *"Dear Richard, (cc Nigel Peake, Martin Haehnelt, the Deputy Directors)*
>
> *I have now received some Legal Advice from the School.*
>
> *I wish to make you aware that I made recordings of all my meetings with you this year.*
>
> *I did this out of fear you would turn on me; I do not habitually record meetings, of course.*
>
> *The recordings are stored on a secure hard drive, independent of the IoA computer system. Nigel Peake has asked me to produce transcripts of some of this material, pertinent to the matter in hand.*
>
> *---*

Perhaps I can add that I have been largely supportive of your Directorship.

However, in my judgment, your treatment of Gudrun has been exceptionally cruel.

I am personally very sorry it has come to this.

But, for the good of the IoA, I think you should now step down & let one of the Deputy Directors take over while this matter is fully investigated.

Best Wyn"

216. During the Tribunal hearing Professor McMahon was questioned in detail about what discussed in the meeting with the Deputy Directors, however his oral evidence was confusing and contradictory as he suggested there had been a discussion about Dr Pebody's wellbeing, before then saying he had no recollection about discussion about her, although he said there had been concerns around her anxiety and the end of contract process, however he said he could not remember the details. Professor McMahon's evidence was rather muddled and hard to follow.

217. As to whether the Claimant's email that day had been discussed, Professor McMahon's evidence was also confusing as he suggested he had read it but could not remember when.

218. We find that both the Delays Document and the concerns raised in the Claimant's email of 20 July 2021 to Professor Peake were discussed between the Deputy Directors and the Claimant during that meeting. This was clear from the evidence of Professors Challinor and Reynolds. The evidence of Professor Reynolds was that the Second Respondent had been frustrated with the proposed circulation of the Delays Document.

219. During that meeting the Deputy Directors asserted that the whole ORP grant should be accepted; there should be formal underwriting of Dr Pebody's contract; and an apology should be issued to her. Both Professor Reynolds and Professor Challinor strongly expressed that immediate action was needed to defuse the situation. Professor McMahon confirmed in evidence to us that the Deputy Directors told him that his proposals with respect to the ORP were wrong, although he did not accept that.

220. Professor McMahon told the Deputy Directors that the consultation process had already been suspended the week before on 21 July 2021 and Dr Pebody's role had been effectively underwritten.

221. Professor McMahon told the Deputy Directors that he had been considering accepting the part of the ORP grant that funded Dr Pebody but declining ("zeroing out") the other parts of the grant including the Research Associate on the basis that it was of no scientific benefit to the Institute. This is not what Professor McMahon was recorded as having told the Claimant on 7 June 2021, and we noted the second use of the phrase "zeroing out" which was recorded in the Zoom meeting notes as "declining".

222. In any event both Deputy Directors are recorded as having strongly expressed the view that the principles of academic freedom applied and they did not see the basis on which the Institute could refuse any part of the grant, and they did not see a reason why the whole grant could not be accepted. Within his oral evidence Professor Challinor confirmed that the principle of academic freedom was sacrosanct. Professor Reynolds had stated that in in concordance with the principle of academic freedom, it was not within Professor McMahon's authority to force a change of PI during a grant, nor to prescribe that the acceptability of the grant renewal proposal would be tied to the appointment of a specific PI.

223. As a result of these discussions Professor McMahon agreed to the three actions recommended by the Deputy Directors – (i) to accept the grant; (ii) to underwrite Dr Pebody's role; and (iii) to issue an apology to Dr Pebody.

224. Whilst we have nothing before us to suggest that the Claimant's email of 20 July 2021 was forwarded to Professor McMahon, we do find that the contents of it were discussed between him and the Deputy Directors and Ms Macharia on 27 July 2021.

225. This is because those present confirmed to us discussing the atmosphere within the Institute, and also Professor McMahon's proposed actions with respect to the grant.

226. In addition, the brief notes of the meeting on 27 July 2021 record that the Deputy Directors expressed the view that the situation with regards to the Claimant's complaints risked causing a serious rupture and immediate action was warranted to defuse tension. Professor Reynolds was questioned about the reference to complaints, and he agreed in his oral evidence that this included both the delays to signing the grant, but also the treatment of Dr Pebody.

227. Likewise, Professor Challinor had provided written answers to Mr Scott-Joynt as part of a subsequent investigation, and he stated:

> *"regarding discussion of GP, I don't recall much beyond what is in CR's notes. I think there was general regret expressed by RM over the timing of the end-of-contract letter and the stress that this may have caused. I don't remember RM offering any explanation of why he was willing to reverse his position, but an eventual appreciation of the severity of the situation (e.g., the allegations being made by WE and MH) and the very strong steer from CR and I were surely a large part of this.*"

228. In his oral evidence to us, Professor Challinor confirmed that the allegations being referred to related to concerns about Dr Pebody's wellbeing and her alleged mistreatment by Professor McMahon.

229. Professor Reynolds also confirmed to us that the notes of the Zoom meeting with Ms Macharia the day before had served as the agenda for this meeting. The notes of that meeting recorded that:

"AC and CSR expressed the view that the real substance of Wyn's allegations were not the details of the grant but instead were the wider claims of bullying.

…

We discussed Gudrun's well-being."

230. Professor Reynolds and Professor Challinor have both given the Tribunal honest and credible witness evidence, and we find that the contents of the 20 July 2021 (about the treatment of Dr Pebody) email and the Delays Document were both discussed within that meeting between Professor McMahon, the Deputy Directors, and Ms Macharia.

231. Professor McMahon was questioned in the Tribunal hearing about his understanding of what the Claimant was alleging. Professor McMahon told us that when he read the email of 27 July 2021 it did not make sense to him, he appeared to challenge the formatting of it, and he told us that the language was hard to understand; and he then told us in his oral evidence that the email was nonsense.

232. We have rejected Professor McMahon's evidence that he did not understand the Claimant's email of 27 July 2021 and we agreed with the Claimant that he is a highly intelligent and educated person who did not seek clarification at the time because he had understood it; he is a distinguished academic used to forensically examining papers and documents; he did not suggest in his witness statement that he did not understand the email – rather he addressed the contents in nine sentences within his witness statement.

233. Professor McMahon appeared to acknowledge during the Tribunal hearing that upon reading the Claimant's email he understood that something had been reported to Professor Peake which he later confirmed to be an allegation of treating Dr Pebody cruelly which needed to be investigated.

234. In addition, it also appeared to us that Professor McMahon understood that it was likely that there would be some form of investigation (into the treatment of Dr Pebody) after the Claimant's email, as Professor McMahon referenced in his witness statement the Claimant's request for him to stand down *"whilst the matter was further investigated."*

235. Professor McMahon was questioned in the Tribunal hearing about his reaction to this email and his evidence was that the email did not prompt his subsequent grievance about the Claimant (and others) under the Dignity at Work Policy.

236. The Tribunal found it surprising that within the subsequent investigation by Mr Scott-Joynt, when considering whether Professor McMahon's subsequent grievance was retaliatory, he was not asked about what he knew about the complaint that had been made about him. Neither Professor Ferran nor Ms Rampton (who would later become involved) sought to explore this either. This was a critical flaw within the original investigation which then permeated future consideration of that issue.

237. At 2:23pm that day Professor Challinor wrote to the Claimant and Professor Haehnelt to confirm the outcome of the meeting with Professor McMahon (R2). In his email Professor Challinor recorded that Professor McMahon expressed regret about the letter issued to Dr Pebody and the impact it may have had on her well-being. Professor Challinor went on to confirm that Professor McMahon was willing to write a letter of apology to Dr Pebody however there may be a delay doing so whilst he seeks guidance on the other serious allegations the Claimant was making.

238. In addition, it was recorded that resolving issues on the grant was only a minor part of his concerns and that on the more serious allegations raised about Professor McMahon's behaviour to Dr Pebody, they awaited instruction from the School on how they wished to proceed. The logical implication from that sentence is that concerns about Dr Pebody's wellbeing and her treatment had been discussed with Professor McMahon in that earlier meeting and he was aware of the concerns being raised by the Claimant and he had reason to suspect that an investigation was likely.

239. Professor Peake and Ms Birrell then met Professor McMahon on 27 July 2021 at 2:30pm to discuss the Delays Document, and Professor McMahon advised that he had approved underwriting the ORP grant and that Dr Pebody's role was secure. Professor Peake says he did not share the Claimant's email of 20 July 2021 (the alleged first protected disclosure) however we find he discussed the contents. We were told very little about the contents of this meeting and what was discussed.

240. Professor Peake asked Professor McMahon if he told the Claimant wanted to zero out the ORP grant in the meeting they had in June, which Professor McMahon denied that it had ever been his intention to do so, and he had approved the grant in December 2020 (or November 2020) and the difficulty was that he needed a PI who had a contract of employment beyond the Professor Gilmore's current end of contract on 30 September 2021. This was not consistent with what Professor McMahon had told the Claimant on 7 June 2021.

241. Professor McMahon's evidence to us was that at the time of circulating the Delays Document the Claimant would have known that he had paused the end of contract process for Dr Pebody and further Professor McMahon recorded in his witness statement "*In no budget scenario was her role at risk of redundancy.*" This begs the question of why the letter had been sent in the first place, and secondly why the process was paused and not immediately withdrawn once it become clear it had been sent in error. Moreover, this is at odds with the contents of Professor McMahon's (R2) earlier email to Ms Akroyd on 25 June 2021 where he said that Dr Pebody was at risk of redundancy. Professor McMahon's inconsistent accounts have made it very difficult to know what he actually thought at the time.

242. At 4:24pm on 27 July 2021 Professor McMahon emailed Dr Pebody and the subject line stated "Underwriting of your employment contract". Within the email Professor McMahon stated:

> *" I am pleased to inform you that following my consultation with the ORP Coordinator about the status of the ORP grant and IoA*

Deputy Directors, the Department will underwrite your contract of employment on a 3-month rolling basis until the time when ORP funds to cover your position are released to the University … I apologise on behalf of the Department for the uncertainty about your future funding and any understandable anxiety resulting from this uncertainty, which was unfortunately due to issues outside our control."

Professor McMahon's (R2) Dignity at Work complaint – 29 July 2021

243. The ORP grant was signed off just before midday on 29 July 2021, and just after 4:15pm Professor McMahon raised a grievance with Professor Peake under the University's Dignity at Work policy against Professor Gilmore, Professor Haehnelt, and the Claimant.

244. The complaints against Professor Gilmore alleged unprofessional, bullying and undermining behaviour towards Professor McMahon and he said some evidence was contained in the Whiting Report and witness statements. Other complaints were made against Professor Gilmore including encouraging Dr Pebody to challenge or ignore policy; that she acted with impunity as other staff were afraid to challenge her; and she was viewed as being sponsored by a senior member of staff who also treats staff with disrespect.

245. Professor McMahon said the negative effects of Professor Gilmore's line management of Dr Pebody was a serious concern because of the negative impact on her mental health, and because she exhibits unprofessional conduct and undermines him and the Departmental Administrator to other staff.

246. As regards the Claimant, Professor McMahon wrote:

"I also want to submit a Grievance against Professor Martin Haehnelt and Professor Wyn Evans concerning their bullying behaviour towards me over the acceptance of the Opticon-Radionet-Pilot grant and other false, unsubstantiated accusations which they proposed to share with all members of the academic staff in an attempt to bully and humiliate me.

They have already shared this with Angela Macharia, Prof Chris Reynolds and Prof Anthony Challinor. Just as serious, Haehnelt and Evans also failed to request that the Department underwrite Pebody's contract and instead used the stress and anxiety caused to Pebody to claim that I had behaved inappropriately.

These false allegation appears to have been orchestrated in collaboration with Gilmore since some of the allegations by Haehnelt and Evans pertain to previous unfounded allegations against me by Gilmore. The impact on Gudrun Pebody of this has been significant, and these members of staff seem to have mobbed me rather than make a request to myself or via my Deputy Directors that her role underwritten until the uncertainty of the grant was resolved. I had already paused the end of contract process and yet they continued to pursue this issue and *tabled an inapprioate* [sic] *document at a Staff Committee meeting. The action would have caused immense damage to the Department since it would have normalised inappropriate behaviour and I could have been forced to resign as a result of this bullying."*

247. Professor McMahon also made one further allegation directed solely at Professor Haehnelt which is not relevant; and he alleged that the Claimant had sent disrespectful emails to the support team – this was a surprising thing to have raised given that it was an historic allegation from around three years earlier, the Claimant had denied it at the time, and it did not relate to Professor McMahon.

248. Professor McMahon referred to having been working under an extremely stressful situation and suffering PTSD following a bullying episode by Professor Gilmore in 2019 for which he had received treatment. Professor McMahon said that he found when under stress he tended to avoid confrontation which resulted in feelings of guilt and shame since he had high expectations of how he should lead and support staff. Professor McMahon said he was submitting the grievance because of the direct effects on himself but also because of the impact of the behaviour of Professor Gilmore, Professor Haehnelt, and the Claimant, on other members of staff.

249. Professor McMahon concluded by stating *"I would also draw to your attention to the fact that UKRI now has a Bullying and Harassment condition in the terms and conditions of its grants."*

250. The University's Dignity at Work Policy requires the following:

"5.6 Formal written complaint

5.6.1… Complaints should contain enough detail to allow an investigation to be initiated. The written complaint should include the following information:

- *Details of any informal resolution that has been attempted;*

- *Any evidence supporting the allegations made, e.g. emails;*

- *Names of any employees who may be approached to provide evidence of the alleged unacceptable behaviour."*

251. Professor McMahon's witness statement records that the reason for making his complaint was due to elements of the Delays Document which contained false and unsubstantiated allegations about him in respect of the ORP grant; and it was what the Claimant and Professor Haehnelt proposed to do with the Delays Document – namely sharing it with all members of the academic staff of the Institute designed to undermine his position as Head of the Department which was an act of bullying.

252. Professor McMahon also told us that it was because the Claimant and Professor Haehnelt had failed to request that the Institute underwrite Dr Pebody's contract and had instead used the impact and stress that this had

caused on Dr Pebody as an opportunity to allege that he had acted inappropriately.

253. The Tribunal found the complaint about the Claimant failing to request the Department to underwrite Dr Pebody's contract to have been an odd allegation to have made given that the Claimant was not the PI on that grant therefore it was not his place to have requested it, save that is precisely what he had requested in the Delays Document. Professor McMahon agreed before us that there had been funds in place from 1 March 2021, therefore Professor McMahon would have known that underwriting was not required. These specific criticisms of the Claimant did not make any sense to us.

254. Professor McMahon was questioned in detail about the contents of his grievance and the meaning of each of his complaints, however his evidence to us was confused and hard to follow. Professor McMahon sought to blame his grade B in GCSE English which did not make sense to us, and he said that this was not a legal letter. Professor McMahon is highly intelligent and accomplished, and whereas it may be that he has undiagnosed dyslexia or some other difficulties, this was his own document and it fell to him to explain to us what he meant by it. Professor McMahon failed to do so.

255. Professor McMahon's evidence to us was that the only alleged protected disclosure he was aware of by the time of sending his email was the Delays Document. Professor McMahon says that he was unaware of the first and second alleged protected disclosures at this time and that the contents had not been shared with him.

256. Professor McMahon also says that he was not party to the conversations said to form the alleged fifth and sixth protected disclosures although Professors Peake, Reynolds and Challinor had subsequently made enquiries of him in terms of the end of Dr Pebodys' contract which he discussed with them, and he had already paused and effectively underwritten her position, and that those discussions did not reference any threat or danger to Dr Pebody's health.

257. We have already made a finding above about what Professor McMahon (R2) would have known before he issued his complaint and we found that he was well aware of the contents of the Claimant's 20 July 2021 email even if the actual email itself had not been shared with him, the contents had been discussed with him.

258. Ms Akroyd has given her own opinion on Professor McMahon's reasons for filing his grievance. We noted Ms Akroyd's evidence that Professor McMahon had already been considering a grievance against Professors Gilmore and Haehnelt, and her evidence was:

> *"My understanding is that the proposed circulation and open discussion of the Delays document was essentially Richard's trigger for submitting the Dignity at Work complaint he had been considering for some time. In particular, and as I understand it, the elements of Richard's complaint relating to the Delays document, were not necessarily relating to simply the content of the document, but it was also the fact that it had already been*

> *circulated to a number of individuals within the IoA and was being proposed to be raised as an agenda item at the departmental meeting on 28 July 2021, which was subsequently cancelled. Richard thought it was completely inappropriate for this document to be tabled for discussion at a staff meeting…"*
>
> And:
>
> *"In terms of the timing of Richard's Dignity at Work complaint, my belief is that the proposed circulation of the Delays document was the most recent situation that Richard felt demonstrated the concerns to be formally investigated. The Delays document detailed various allegations and issues that Wyn and other colleagues wanted to discuss in a manner he considered to be inappropriate and so it was clearly set out. As a result, I think this is likely why Richard submitted his complaint when he did."*

259. Although the Claimant was questioned in the hearing and initially agreed that Professor McMahon was complaining about the manner the Claimant raised his concerns (sharing the Delays Document), the Claimant also clarified the following day that he had misspoken and it was not solely the Claimant's manner of raising his concerns that Professor McMahon was complaining about, it was also the concerns the Claimant was raising which were causative. In any event our focus is on why Professor McMahon acted as he did. Nevertheless we have noted that even Ms Akroyd recognised that the contents of the Delays Document was a factor in the decision of Professor McMahon to issue the grievance.

260. Whereas paragraph 5.1.1 of the policy refers to Natural Justice and provides that the person complained about has the right to know the nature and sufficient details of the complaint in order to respond, the Claimant was not made aware of the grievance against him dated 29 July 2021 until 3 September 2021, and even then he was not provided with a copy of the document until 19 October 2021 some 115 days after it had been filed. The Tribunal found this to be an extraordinary delay on the part of the University in making the Claimant aware of the accusations against him, and it was the start of a catalogue of delays and inaction whereby the matter dragged on for a number of years.

261. Leaving aside the motivation for bringing the grievance, and also leaving aside the delay in telling the Claimant about it, one of the disputes in this matter is why it was decided to accept it and investigate it in the first place as Professor McMahon did not state what the false and unsubstituted allegations were that he accused the Claimant of making; moreover he appeared to be referring to a historic allegation against the Claimant from three years earlier which did not relate to Professor McMahon. The Claimant says that it was clearly malicious and vexatious and done in retaliation towards him and others.

262. As regards the process for dealing with grievances, the Policy provides that informal resolution should first be attempted where appropriate, and this is something the Head of Institution should explore before commencing an investigation. This was not done in this case. The policy does not set prescribed deadlines for an investigation save to require that they be

completed as quickly as practicable. The policy provides that where the complainant does not accept the outcome they may appeal – there is no equivalent right for the person complained about.

263. It is possible under the Policy for a complaint to be considered to be malicious or vexatious if it is made in bad faith, or if deliberately false allegations are made as a form of bullying against a colleague or manager, or where there are a series of frivolous and clearly unfounded allegations. In such a case the Head of Institution may instigate disciplinary action against the complainant, however the policy provides that no disciplinary action will be taken against a complainant where a complaint is mistaken or otherwise ill-founded but not malicious or vexatious.

264. Where the Head of Institution upholds the complaint and finds that there is a case to answer, then paragraph 5.12 of the Policy provides that disciplinary action may be instigated against the person complained of.

265. Professor Peake made the decision that the grievance should be accepted and for an investigation to be undertaken. Professor Peake's evidence to us was that he did so due to the nature and the seriousness of the allegations against three members of academic staff. Professor Peake said that it was a reasonable complaint to be made in the circumstances and warranted further investigation given his experience of the Claimant and Professor Haehnelt's previous behaviour in relation to the Delays Document. Moreover Professor Peake said that it was not something he should immediately dismiss as Professor McMahon was at liberty to raise a complaint if he considered that he been treated unfairly *"and in my view the complaints were clearly not malicious and/or vexatious."*

266. Professor Peake said that any member of staff at the University has the right to raise grievance and for it to be taken seriously unless it is abundantly clear at the outset that the complaint is malicious and or vexatious. Professor Peake said that was not the case here, and for him to dismiss a complaint without taking further action would be a huge step to take and not something he had ever done, and he was not prepared to take such action in this case.

267. There was no attempt at an informal resolution in this matter, contrary to the policy making provision for it where appropriate. When questioned about this Professor Peake told us that he didn't think that it would have been successful. Nevertheless, in his evidence Professor McMahon repeatedly told us that all that was needed was an apology from the Claimant and all of this would have been avoided. Accordingly, the failure to consider informal resolution was a missed opportunity and all that has since followed may potentially have been avoided.

268. As will be noted later in this judgment, the Claimant sought to pursue a number of grievances and one of which was rejected outright by the Ms Rampton (R3) the Registrary because he had not first attempted an informal resolution. Clearly the University was cognisant of the importance and value of informal resolution, yet Professor McMahon's grievance was affectively allowed to bypass that stage whereas later the Claimant was penalised by Ms Rampton (R3) for allegedly not doing so.

269. By the time of the final hearing in this matter by this Employment Tribunal in June 2026, some five years later, Professor McMahon had at no point ever explained what the false and unsubstantiated accusations were that he alleged the Claimant had made against him.

270. The Dignity at Work Policy also requires complainants to maintain confidentiality:

> *"5.1.3 Confidentiality*
>
> *In order to safeguard individuals, confidentiality must be very strictly respected and information limited to those who have a need to know (and only to the extent necessary) for the purposes of the operation of these procedures and for maintenance of good order in the University. The University reserves the right to seek advice from or involve appropriate external authorities if it believes that it is under an obligation to do so. Any breach of confidentiality may result in disciplinary action being instigated."*

271. Within moments of filing his grievance Professor McMahon breached the policy by telling Professor Reynolds (whom he line managed) that he had filed the grievance and making him aware that he was accusing the Claimant and Professor Gilmore and Professor Haehnelt of bullying and harassment. Professor McMahon said that he had *"played a very very long game"* which he now tells us related to Professor Gilmore whom he considered to have been subversive through his time in the department. Professor Reynolds replied "*Good!."*

272. Minutes later Professor McMahon breached the policy a second time by emailing Dr Walton and telling him he had raised a grievance against the Claimant and the two others, describing them as *"amateurs."* Professor McMahon said that it was quite a mess but he felt this should sort things out. Professor McMahon and Dr Walton had a meeting by Zoom later that day, and we do not know what was discussed although it is reasonable to assume that the grievance against the Claimant was part of the discussion.

273. The following day Professor McMahon then breached the policy a third time as he shared a copy of his grievance with Ms Macharia, the Departmental Administrator, stating that she would be called as a witness particularly with respect to Dr Pebody and the Faculty Board Minutes.

274. These three exchanges were made in breach of the University's Dignity at Work policy which requires confidentiality. During the hearing Professor McMahon denied that this was a breach and he suggested that it allowed him to share the grievance with others, and his evidence to us was that he told Professor Reynolds as person to whom false and unsubstantiated allegations about him had been communicated by the Claimant.

275. At no point did Professor McMahon ever ask those three people to treat the information as confidential.

276. In his evidence Professor McMahon attempted to justify his breach of confidentiality on the basis that the Claimant was also discussing the

situation within the Institute and had been a signatory to a letter calling for his resignation, as well as his activity in the media.

277. We reject that evidence an attempt at *ex post facto* justification. Whereas there was a subsequent letter of no confidence in Professor McMahon signed by the Claimant and others, and media interest, neither of those things had taken place at this time, therefore matters which had yet to happen could not possibly have influenced Professor McMahon to breach confidentiality in the way in which he did. We acknowledge that the Claimant had discussed his concerns with a number of people including those who had seen the Delays Document, however Professor McMahon was nevertheless in breach of the confidentiality provisions of the Dignity at Work policy. Despite the Claimant later raising Professor McMahon's breaches of confidentiality with the University, no action was ever taken on those concerns, they were simply ignored in particular by Professor Harper and Professor Flewitt.

Seventh alleged Protected Disclosure – The Behaviours Document

278. Ms Birrell asked the Claimant to provide a transcript of the covert recordings he had made, and on 2 August 2021 the Claimant provided a document entitled *"The Behaviour of Richard McMahon to Gudrun Pebody"* ("the Behaviours Document") setting out transcriptions of the 7 June and 16 July 2021 meetings, together with additional information. The University's HR Department subsequently treated this as a grievance even though the Claimant had not expressed it as such.

279. Within the Behaviours Document the Claimant made reference to matters allegedly occurring after 2 June 2021, including the meeting of 7 June where Professor McMahon said that he wished to zero out Opticon; delays signing the ORP grant; the discussions between the Claimant and Professor McMahon on 16 July 2021 on signing the grant; the alleged further conditions imposed by Professor McMahon after that meeting; the invite to consultation letter sent to Dr Pebody and the impact upon her mental health; and the conversations with Professor McMahon about the Examiner's Minutes. The first alleged protected disclosure of 20 July 2021 to Professor Peake is included in full and all the earlier communications relied upon as protected disclosures are referenced, including allegations of bullying of Dr Pebody.

280. Within the conclusions section the Claimant wrote:

> *"There is overwhelming evidence of a plot instigated by Richard to make Gudrun redundant. This plot existed at least since 7th June. Richard's activities do not seem to be consistent with the good employment practices to which Cambridge University should aspire. There is overwhelming evidence of bullying of a very serious kind. The bullying drove its victim right to the edge of self-harm. Richard's behaviour does not seem to be consistent with the dignity at work or anti-bullying practices to which Cambridge University should aspire.*
>
> *…*

The Director of the IoA has very substantial power. Richard harnessed this power to carry out a vendetta against someone he did not like, against someone who had complained about him, against someone who was virtually defenceless. This is a serious abuse of power. In my opinion, the Director must be especially careful in the treatment of his enemies or critics to ensure that his motives are not driven by spite or malice."

281. The Claimant repeated his request for Professor McMahon to stand aside pending an investigation.

282. In his witness statement for this hearing the Claimant addressed the reasons for sending this document and his earlier communications and he stated that he remained at peace with the decisions he had made, and further by reference to Dr Pebody he stated:

"There was a real and immediate danger to her life over the weekend of 17 – 18 July 2021. At times, one must act simply because it is the right thing to do."

283. The University has argued that this letter was the start of a vendetta against Professor McMahon which has now lasted for five years. The Respondent has also accused the Claimant of seeking vengeance. I asked Ms Reindorf KC during closing submissions what it was the University alleged the Claimant to be avenging, however I was informed that nobody knew.

284. We note that the Behaviours Document had been written after Professor McMahon signed the X5 form which would protect Dr Pebody's role which had been underwritten.

Investigation process

285. After issuing his grievance, Professor McMahon met with Professor Peake and Ms Akroyd from HR to discuss the matter during which he said that he wanted his grievance to be investigated formally. The Tribunal was surprised given how serious matters had become, and given the previous history within the Institute including the Whiting report, that no one thought to make a note of this meeting. Whereas perhaps it may not have naturally occurred to Professor McMahon to have made a record, we would have expected either Professor Peake as Head of School or Ms Akroyd from HR to have at least made a note. The witness evidence of the contents of this meeting was very limited.

286. The subsequent investigation into the Claimant's concerns and Professor McMahon's grievance was then subject to an extraordinary level of delay.

287. Professor McMahon did not include any evidence with his grievance and none was initially requested of him by HR. On 3 September 2021 the Claimant was informed that Professor McMahon had brought a grievance against him, however he was not provided with the text of it until 19 October 2021.

288. Some delay was encountered due to a dispute between the parties as to the correct process for the Claimant's concerns to be investigated under. The Claimant maintained that it should be under the Whistleblowing Policy as he was not complaining about his own treatment; the University maintained it should be the Dignity at Work Policy.

289. On 24 October 2021 the Claimant made a formal request via the University whistleblowing disclosure inbox for his concerns to be dealt with under the University's Whistleblowing Policy. At that time Dr Michael Glover (Academic secretary) and Ms Emma Rampton (the Registrary and a non-practicing solicitor) were responsible for the University's Whistleblowing Policy. The role of Registrary is the principal administrative officer and the head of the University's administrative service and also Secretary to the University Council.

290. Ms Hudson (HR Director) and Thuy Niven (Assistant HR Director) and Ms Akroyd provided advice and input and disagreed that the matter should be handled under that policy, and Ms Hudson wrote many or most of the letters from Dr Glover rejecting the use of that policy. Dr Glover also received legal advice on that matter, likely from Sam Gardner who has been heavily involved in advising a number of decision makers and HR in this matter. In any event on 21 December 2021 Dr Glover agreed that the matter should be investigated under the Whistleblowing Policy. By this time over five months had elapsed since the Claimant first raised his concerns. The later investigation by the external barrister, Mr Scott-Joynt, found that the Whistleblowing Policy had been the appropriate policy. Accordingly, the five months spent debating the issue appeared to have been wasted time.

291. Further delays were incurred due to a dispute over the choice of investigator as the University proposed to instruct B3Sixty however the Claimant opposed this as they had just undertaken the Whiting Investigation and it would have to evaluate new material which was in direct conflict B3Sixty's Whiting Report.

292. The Claimant was opposed to the University's choice of Professor Dennis as Responsible Person (decision maker) as he was the partner of Ms Akroyd in HR who had been involved in this matter. This was changed to Professor Beverley Glover.

293. Whereas correspondence was sent out in the name of Professor Beverley Glover as the Responsible Person, the reality was that none of these were drafted by her but were produced by HR, in particular by Ms Hudson, which Professor Glover simply put her name to. As will be seen later in this judgment, this was a common theme throughout this case with HR producing many of the letters and decisions for the decision makers which, from the limited evidence before the Tribunal, they appeared to accept unquestionably, in most examples appearing to simply rubber stamp decisions made by HR with little or no independent thought of their own.

294. The way in which decisions have been made in this case have caused the Tribunal to treat some of the Respondents' witness evidence with caution as we remained concerned that witnesses were being questioned on decisions they may not have taken but had been brought before us to defend.

295. Professor Beverley Glover stood down as Responsible Person in mid December 2022 and Professor Ferran was then appointed. The University seeks to blame the Claimant for this, alleging that it was due to the correspondence he was sending her. We were not directed to any specific correspondence in the hearing therefore we do not make any finding other than to record that further delay was incurred due to the change of Responsible Person.

296. The dual investigation into the Claimant's concerns and Professor McMahon's grievance commenced on 8 March 2022 when the Terms of Reference for the whistleblowing investigation and the grievance investigation were set by Ms Akroyd and Ms Birrell and were signed off by Jeremy Scott-Joynt who was appointed as the investigator. Mr Scott-Joynt is an experienced barrister with a busy legal practice of his own.

297. There were extraordinary delays in the conduct of the investigation by Mr Scott-Joynt. Unfortunately, Mr Scott-Joynt suffered two bereavements in that period, one of which was his mother, and inevitably these very sad events involved delays of two months which the Claimant does not seek to criticise in any way.

298. The Claimant has alleged that Mr Scott-Joynt was over-committed taking into account this investigation and his work for other clients, and that did appear to the Tribunal to be a valid concern given the slow pace of the investigation and because Mr Scott-Joynt confirmed on email that he had been working weekends and was up to his eyeballs with work.

299. Moreover, there was a delay in asking Professor McMahon to provide evidence to not just substantiate his grievance, but to particularise it in the first place as it appeared to the Tribunal to be particularly barren of detail.

300. Mr Scott-Joynt did routinely ask Professor McMahon for his evidence, but none was ever provided, and this caused further delays. The evidence was requested on 10 May 2022, 20 May, 26 May, 13 June, 30 August, 29 September, 12 October, 9 November, 23 November, and 14 December 2022. Deadlines were extended for Professor McMahon to comply, including in September and October 2022 when he was in the process of handing over the Directorship to the new Director.

301. This first request for the evidence in May 2022 was almost ten months since Professor McMahon filed his grievance. Whereas there was dispute and discussion over which policy to use and the identity of the Responsible Officer, it is a matter of serious concern that it took so long to ask for evidence from Professor McMahon. This is particularly so when the grievance contained such little detail.

302. The Claimant was first interviewed by Mr Scott-Joynt on 25 May 2022, however the meeting was not recorded, and there were disputes over the accuracy of the notes of the minutes taken by Ellie Bird from HR as the Claimant alleged that they had been heavily sanitized by her with important material omitted, including things unfavourable to Professor McMahon, to Professor Peake, and also to HR.

303. By July 2022, a year since it had been filed there had been no progress with respect to Professor McMahon's grievance which remained both unparticularised and unsupported by evidence.

304. On 26 July 2022 the Claimant instructed solicitors to lodge proceedings for defamation in the High Court against Professor McMahon regarding the contents of his grievance. This was done at this time in view of the impending expiry of the limitation period.

305. On 11 August 2022 Ms Hudson emailed Ms Akroyd, Professor Peake, Ms Gardner, Ms Niven and Ms Birrell. Within that email she addressed the delays in Professor McMahon's grievance. Ms Hudson wrote:

> *"I am very concerned about the impact on the timescales. I do not think it reasonable to delay confirming the outcome of that process while the Investigator looks into the counter-complaint. To me, that feels unreasonable and exposes us to further criticism about how long this whole process has taken. It would be my preference therefore that he confirms the outcome of the current investigation as soon as it is known.*
>
> *I also understand that part of the delay in concluding the current investigation is due to Richard McMahon not supplying certain documents requested by the Investigator, despite being chased on more than one occasion. While I appreciate this is a stressful process for Richard, I do not think it reasonable that he continues to delay matters. I therefore think we need to give him a hard deadline and explain that if he fails to meet that deadline then the Investigator will conclude matters based on the information he has to hand."*

306. We noted within that email, Ms Hudson referred to Professor McMahon's (R2) grievance as a counter-complaint. The clear implication, from the use of the word counter, is that Ms Hudson thought that this was in response to the concerns or complaints raised by the Claimant. Ms Hudson has not given evidence to us.

307. Ms Akroyd was asked about this matter in the hearing and she disagreed that it was a counter-complaint and she said that Ms Hudson was wrong. That may be Ms Akroyd's evidence to us now in the midst of a tribunal hearing, but we have not been referred to any response from her at the time challenging that description from Ms Hudson. The comment from Ms Hudson, unchallenged it would seem from all the others on that exchange, is suggestive to us that the University's HR department were of the view that Professor McMahon's grievance was a counter to the complaints raised by the Claimant.

Grievance against Ms Hudson – 30 August 2022

308. On 30 August 2022 the Claimant submitted a grievance against Ms Hudson (Director of HR) to Professor Kamal Munir who was Chair of the HR Committee and Pro-Vice Chancellor for Community and Engagement.

309. Within the grievance the Claimant alleged that Ms Hudson failed to ensure that HR staff within the School of Physical Sciences implemented University policies correctly; that she routinely supported her staff when their conduct was inappropriate; and she did not follow or enforce University procedures and repeatedly declined to address the failures when raised by the Claimant or others.

310. Professor Munir, in conjunction with HR, initially resisted dealing with the grievance on the basis that it fell within the ongoing investigation by Mr Scott-Joynt and the Claimant should raise the concerns as part of that process. Nevertheless, the grievance was accepted once it was made clear the following day that it was not something that Mr Scott-Joynt would be dealing with. It then took the University almost six months to allocate the matter to Professor Tim Harper to act as Responsible Person on 5 February 2023.

311. A second interview between the Claimant and Mr Scott-Joynt took place on 22 September 2022 and detailed notes were taken by Emma Thomas which the Claimant agreed promptly.

312. The following day on 23 September 2022 Mr Scott-Joynt informed the Claimant that there was adequate material to justify examination of two complaints brought by Professor McMahon – (i) the allegation that he had made false and substantiated accusations; and (ii) that he had orchestrated allegations in collaboration with Professor Gilmore. The other matters within the terms of reference were therefore not advanced.

313. It has not been explained to us how the view was reached that there was adequate material to proceed with the first allegation about making false and unsubstantiated accusations given that Professor McMahon at no point said what they were. This did not appear to be compliant with the rules of Natural Justice referred to explicitly in the University's policy whereby someone who is accused should know the case against them. It appeared strange to the Tribunal that a complaint could be allowed to proceed for 14 months by this stage, yet there was no detail.

314. On 11 October 2022 the Claimant wrote to Mr Scott-Joynt to request to be provided with the evidence against him before their final meeting to which Mr Soctt-Joynt agreed, however none was forthcoming and the meeting did not therefore take place. The Claimant in his witness statement argues that the process was completely asymmetrical and one sided as Mr Scott-Joynt continued to request further information from him but none was provided from Professor McMahon leading the Claimant to consider that he was being subjected to a "fishing expedition."

315. The Tribunal shares that concern – it was difficult for the Tribunal to understand on what basis Professor McMahon's grievance was being progressed by the University if the complainant would not even particularise his own allegations. It would have been open to the University to have rejected the complaint much earlier due to the failure to engage, however it chose not to do so and to keep it going.

316. On 19 December 2022 wrote to Dr Michael Glover (Academic Secretary) and the then Vice-Chancellor, and he raised concerns about the conduct of

the investigation into his whistleblowing concerns, asserting that conflicted people had been involved in drafting the terms of reference and their improper involvement in the process; and that he was being subjected to a detriment due to the absence of evidence against him in Professor McMahon's grievance; there had been sufficient time to identify that it was without foundation or evidence; and he had not received protections owed to whistleblowers and had been forced to hire his own lawyers to defend himself against the allegations from Professor McMahon. The Claimant continued to chase for a response for a number of months however we have not be referred to any substantive reply.

317. On 5 February 2023 Professor Munir informed the Claimant that Professor Harper had been appointed as the Responsible Person to investigate his grievance against Ms Hudson which had been filed just under six months earlier.

318. On 25 February 2023 the Claimant emailed Ms Rampton, the Registrary, raising concerns about the conduct of the whistleblowing investigation by the Academic Secretary, Dr Glover. The Claimant raised concerns of procedural defects; conflicts of interest in setting up the inquiry; failure to protect whistleblowers from retaliation; and detriments or violations of the Public interest Disclosure Act.

319. Mr Scott-Joynt's investigation into the Claimant's concerns and Professor McMahon's grievance was completed on 4 March 2023, and on 21 March 2023 Ms Rampton replied to the Claimant acknowledging the delays but asking him to await the outcome of the consideration of the investigation reports by Dr Glover and Professor Ferran. This response had been prepared by Ms Hudson in HR on behalf of Ms Rampton.

320. Ms Rampton now says in her evidence the delays were due to a number of contributing factors, some of which were outside of the University's control, such as the personal circumstances of Mr Scott-Joynt. Whereas the Claimant responded to Ms Rampton on 26 March and 14 April 2023 to say that the matters he was raising were not going to be considered in the investigation report, however Ms Rampton indicated she would not progress this until the investigations had concluded.

321. As regards the delay in issuing the investigation report, within the terms of reference, the investigation report was due on 30 April 2022 which, given the appointment of Mr Scott-Joynt in March 2022 was wholly unrealistic. With the exception of the email from Ms Hudson of 11 August 202, we were not referred to any evidence or documents where anyone within HR raised concerns with Mr Scott-Joynt about the length of time the process was taking, nor was there any consideration of whether, (especially during his periods of bereavement) the investigation might be reallocated due to the delays and lack of tangible progress. The process was allowed to drift excessively with very little if any effective oversight, and there was a clear lack of ownership or interest from HR.

322. Ms Akroyd gave evidence on the delays experienced in this process which she said was initially due to the Claimant disputing which policy his concerns should be investigated under, and secondly due to the level of

input required from various members of the University when drafting correspondence. Ms Akroyd's evidence was:

> *"Further delays are attributed to the level of input required from various members of the University when drafting correspondence. Any correspondence from the senior members of the University, for example, the Academic Secretary, the Registrary or Vice-Chancellor, would not be drafted by themselves in isolation, and would instead be drafted with input from HR, and sometimes Legal Services as well. This is standard practice. In all, this means that multiple members of HR, Legal Services, and the direct recipient were required to consider the correspondence, draft replies, and consider next steps. This naturally caused the process to be drawn out. In my experience, there was no conscious decision on the University's part to delay the investigations in any way and the need to progress the complaint as soon as possible was recognised as being important."*

323. As with other matters we have identified within this judgment, the University seems to apportion blame to the Claimant for matters which it had ownership over.

Defamation proceedings

324. On 24 April 2023 a preliminary hearing took place for the Claimant's defamation claim. The matter was heard by Mr Justice Linden who concluded that the meaning of the two imputations in Professor McMahon's grievance email of 29 July 2021 was that:

> *"i) The Claimant and Professor Haehnelt had engaged in bullying behaviour towards the Defendant by proposing to share, with all academic staff, allegations against the Claimant in relation to the acceptance of the Opticon-Radionet Pilot grant which the Claimant and Professor Haehnelt knew to be false. As part of this behaviour they had already shared the allegations with Angela Macharia, Professor Reynolds and Professor Challinor. The Claimant and Professor Haenhelt had acted together and Professor Gilmore had collaborated with them for these purposes;*
>
> *ii) The Claimant and Professor Haehnelt had chosen not to request that the contract of Dr Gudrun Pebody be underwritten when they could have done so and, instead, chose to use the stress and anxiety which her situation caused her for their own purposes by claiming that the Defendant had behaved inappropriately."*

325. Following on from that, Professor McMahon conceded that the first imputation was defamatory, and Mr Justine Linden found that the second imputation was defamatory on the following basis:

> *"As regards the second imputation, fundamentally this is an allegation of failing to act with integrity and, instead, cynically*

causing or permitting a more junior colleague to be distressed in order to exploit her suffering for the Claimant's own ends. This statement would clearly tend to lower the Claimant in the estimation of right-thinking people generally. In my view, it also crosses the threshold of seriousness. In this connection I note that the Defendant presented the second imputation as being "just as serious" as the first imputation which he accepts was defamatory. In his e-mail he also pointed to serious consequences for Dr Pebody and potentially serious consequences for himself, and he did so in the context of a formal procedure which concluded with his suggesting that there could be consequences for the funding of the department. Clearly, if this second allegation were upheld it would amount to serious misconduct and potentially have disciplinary consequences for the Claimant."

326. A mediation took place for the defamation claim on 15 November 2023 and Professor McMahon conceded that the allegations against the Claimant were untrue and he undertook not to repeat them. This was recorded in a Tomlin Order and accepted as part of the judgment of the High Court of 2 January 2024. As part of the Tomlin Order the bullying allegations were withdrawn. No action was taken against Professor McMahon by the University following his concession that the allegations had been untrue.

327. Professor McMahon (R2) now says in his evidence to us that whereas he had accepted that the Claimant had not ***knowingly*** made false allegations in the Delays Document, but that does not mean that he (Professor McMahon) did not consider the allegations to be unsubstantiated or ***unknowingly*** false.

328. Professor McMahon was questioned about this matter during the Tribunal hearing in the context of why he did not withdraw his grievance following that decision. Professor McMahon's evidence to us was that this was the opinion of the judge, he did not agree with it, and the University would make its own decision.

329. Following on from those defamation proceedings the Claimant started to ask who had funded Professor McMahon's defence to that claim. It is now an undisputed fact that it was funded via one of the University's insurance policies, the process by which this came to be will be addressed later in this judgment. The Claimant made repeated requests for confirmation of whether the University had funded the defence, however this were resisted for a considerable period of time, in particular by Dr Glover and Ms Rampton (R3).

Meeting between Professor McMahon (R2) and Professor Ferran – 2 May 2023

330. On 23 April 2023 Professor Reynolds emailed Professor Peake and stated:

"I'm writing in confidence to express concern about Richard McMahon's well-being. I am one of the few people who Richard feels comfortable talking to about the ongoing legal process, and

he clearly feels that the University is putting an excessive burden on him to fight his case. He feels under attack and, I think, alone. I am increasingly worried about the toll it is taking on him.

I personally find it utterly outrageous that he is being put through this trial (literally) for actions taken while serving in his capacity as HoD. What I see Richard going through makes a mockery of the University's Dignity at Work process. The University is demonstrating a significant failure in its duty of care to Richard (this statement is true irrespective of the final outcome of any case or investigation).

I know that the School takes this matter seriously - but it does not seem to be enough. I'm flagging that Richard needs more support, both morally and legally. If you have any "big guns" to deploy on this problem, now is the time to do it."

331. Professor Peake replied:

"Thanks for this Chris, I completely agree, this is an appalling and outrageous situation. I'm reaching out to Richard now to talk, and am also pushing our legal people to give him absolute clarity about the support available."

332. This exchange did appear strange to the Tribunal given that the University would later argue that this was a private dispute to which it was not a party, therefore it was unclear on what basis Professor McMahon felt that the University was placing a burden on him to fight the defamation case.

333. On 26 April 2023 the Claimant was sent the investigation report for Professor McMahon's grievance, however the appendices did not follow until 19 May 2023.

334. Professor McMahon attended a meeting with Professor Ferran and Lisa Clare from HR on 2 May 2023 to discuss the investigation report before reaching her decision as Responsible Officer on the outcome of the grievance.

335. During that meeting Professor McMahon had specifically asked if he could withdraw his complaint and he was told by Ms Clare "*that this may not be possible as the outcome would still need to be given to the others involved"* to which Professor McMahon said he thought he could withdraw his complaint at any point however he was told *"it would be unusual to withdraw at this late stage as the investigation had concluded and had been written up."* This was clear resistance on the part of HR against Professor McMahon withdrawing his grievance and it came only a week or so after Professor Reynolds expressed that he told him that he felt under pressure by the University to fight the defamation claim. This did suggest some sort of animus within the University and specifically within HR towards the Claimant.

336. Professor Ferran said that she would take this away, however she did not do anything about it. In her oral evidence Professor Ferran explained

to us that she did not progress this as she did not think that Professor McMahon was in a state to make such decisions at that time.

337. We also noted the evidence of Ms Akroyd that there is no expectation that an individual withdraws a complaint even if it is not upheld, and the only point at which someone may withdraw complaint if they choose to, is if the University had not fully resolved it and there was no outcome. At the stage of Professor McMahon asking about withdrawing his complaint the matter had not been fully resolved. We acknowledge that the query was made at the 11th hour, but nevertheless it would have been open to the University to have accepted a withdrawal from Professor McMahon upon receipt of the investigation report of Mr Scott-Joynt but before Professor Ferran made her decision. In any event the complaint was never withdrawn.

338. Professor McMahon now tells us in his evidence that this was simply a question, the implication being it was not a request for a withdrawal. That may be so, however it was suggestive to the Tribunal that Professor McMahon was at least considering doing so, and it was the University HR which had resisted against it.

339. Within that meeting Professor McMahon said that at the time of submitting his grievance he was unaware that the Claimant had also put in a complaint. Leaving aside whether the Claimant made complaints, or simply made disclosures, or raised concerns, it was clear that from 27 July 2021 Professor McMahon would have been aware of the contents of the Claimant's email of 20 July 2021 and the Delays Document, and he would have understood that an investigation was likely, and all of this predated Professor McMahon's subsequent grievance by two days.

340. During the meeting Professor McMahon discussed his own mental health and said that when he became emotional it could take him a week to calm down but it was not anger.

341. Professor McMahon says that he did not agree with the contents of the report from Mr Scott-Joynt nor the subsequent outcome from Professor Ferran (which found his grievance to be unsubstantiated) but chose not to appeal it due to the length of time the process had taken and the impact upon his health and that it was impacting his family life as well. Professor McMahon also says that he did not withdraw the complaint at that stage as he was not requested to do so nor did the University's policy require him to do so either. We find that having considered withdrawing the grievance on 2 May 2023, Professor McMahon made the decision to continue with it. That decision was heavily influenced by Ms Clare's comments in their meeting.

Meeting with Professor Harper (grievance against Ms Hudson) – 9 May 2023

342. After initial delays on the part of the University where it sought to resist dealing with the grievance from the Claimant of 30 August 2022, it then took the University almost six months to allocate the matter to Professor Tim Harper to act as Responsible Person on 5 February 2023, who then then did not meet the Claimant until 9 May 2023, a further three months later, and just under nine months since the grievance was filed.

343. There were enormous delays in this matter. We understand that there were difficulties finding someone who would agree to act as a Responsible Person, and then Professor Harper already had a very busy workload which impacted his ability to attend to this matter. We also understand that this was the first time Professor Harper acted in this capacity and he was initially not provided with any steer from HR on how to conduct the process nor the timescales he should meet. Some HR support was then provided by Emma Frampton (Lead HR Business Partner) and then in early 2024 by Katie Cobley took over from her.

344. Whereas there was a considerable amount of documentation in this matter, and as we have observed the investigation report from Mr Scott-Joynt was 80 pages and the appendices were around 1,000 pages or more, and Professor Haehnelt had also submitted a complaint which Professor Harper was investigating in parallel, the approach of Professor Harper was not to review the findings of Mr Scott-Joynt nor to duplicate the investigation process, rather the focus was to look at how Ms Hudson and the HR Department had handled the Dignity at Work complaint brought against the Claimant by Professor McMahon.

345. Accordingly, we observe that whilst a relatively complex task, Professor Harper was not undertaking a full review of the matter, and as such his role was a discrete one.

346. Professor Harper's evidence to us was that he had no real knowledge of the Claimant's disclosures, however that is not accurate as the Claimant passed him the first alleged protected disclosure of 20 July 2021, which he discussed with him when they met on 9 May 2023. We find that Professor Harper was at least aware of that alleged disclosure.

347. We further note that Professor Harper sought HR and legal advice on occasion and he anticipated a legal challenge to his outcome which he said put a lot of pressure on him.

Investigation outcome into Claimant's disclosures – 15 May 2023

348. On 15 May 2023 Dr Glover sent the Claimant the report prepared by Mr Scott-Joynt into his disclosures. This was a long and detailed document which is not repeated in detail in this judgment save to note that Mr Scott-Joynt reported that Dr Pebody had suffered harm as a result of the events; he described her situation as collateral damage; and that Professor McMahon had been motivated by personal animus towards her. Mr Scott-Joynt's view was that the Claimant had made a protected disclosure and that the information disclosed tended to show an endangerment to health, however he held it was finely balanced whether it also tended to show a breach of a legal obligation. The report recommended no formal action to be taken.

349. The Claimant responded to ask Dr Glover, given the decision of Mr Justice Linden in the defamation proceedings, whether it would cease paying the Professor McMahon's legal fees. This appeared to remain unanswered.

Meeting between Claimant and Professor Ferran – 25 May 2023

350. Having met Professor McMahon on 2 May 2023, Professor Ferran as the Responsible Person then met the Claimant on 25 May 2023 prior to which the Claimant sent her a document setting out what he regarded to be errors of fact in Mr Scott-Joynt's investigation report, and he also included a copy of the judgment of Mr Justice Linden at the defamation pre-trial hearing.

351. It is fair to say the meeting started off badly as Professor Ferran opened with an obvious mistake that it was alleged that the bullying was alleged to have occurred over several years. This was incorrect, this had never been alleged with respect to the Claimant.

352. There was discussion of whether Professor McMahon's grievance had been malicious or vexatious, noting that the investigation of Mr Scott-Joynt recommended that it was not. The Claimant invited Professor Ferran to at least consider whether it had been brough recklessly, however she disagreed that it had been.

353. Having noted that Mr Scott-Joynt had found that the Claimant had made at least one protected disclosure (on health and safety grounds), there was then consideration of whether Professor McMahon's grievance constituted retaliation against a whistleblower, noting that Mr Scott-Joynt recommended that it had not been.

354. However, and as noted by the Claimant in his witness evidence to us, this discussion had limitations as Mr Scott-Joynt had not considered whether the Delays Document itself amounted to protected disclosure, which is something that Professor McMahon admitted having sight of. Similarly, there was no consideration of whether any further protected disclosures had been made (or repeated) in the Claimant's meetings with Professor Peake and the Deputy Directors. Inevitably this would then have impacted what Professor Ferran understood when she came to consider whether there had been any retaliation of the Claimant by Professor McMahon (R2).

Complaint about whistleblowing investigation – 15 June 2023

355. During February, March and April 2023 the Claimant had complained to Ms Rampton about the conduct of the whistleblowing investigation by Dr Glover, however Ms Rampton had declined to deal with it pending the outcome of the investigation. Once the outcome had been handed down the Claimant sent a complaint on 15 June 2023 to Ms Rampton about Dr Glover's whistleblowing investigation with respect to the terms of reference; involvement of individuals with a conflict of interest; and the length of time taken to investigate the matter.

Outcome of Professor McMahon's grievance – 11 July 2023

356. In undertaking the investigation into Professor McMahon's grievance, Professor Ferran met with all four Professors Gilmore, Haehnelt, the Claimant and Professor McMahon. Professor Ferran's evidence to us was that she experienced difficulties with Professor McMahon as he was

emotional and could not provide coherent explanations for why he had not pursued his case or provided any evidence.

357. Professor Ferran issued her outcome letter on 11 July 2023. Professor Ferran's evidence that her decision was hers alone and that she would not rubber stamp something from someone else and she had not been influenced in her decision, and she referred us to her role as a senior legal academic; a director in a heavily regulated systemic financial market infrastructure; and a fit and proper person for banking law purposes. Professor Ferran confirmed that she had taken advice from HR and the Legal Department but the decision was hers alone, and that she had on other occasions upheld complaint brought against the University. We believed Professor Ferran's evidence that she made her own decisions in this matter as her testimony on that appeared honest and candid, and we did not see any evidence of HR writing the decision for her.

358. In the outcome letter Professor Ferran determined that Professor McMahon's grievance had been unsubstantiated, and further recorded that it had been regrettable that he had been unable to present evidence to substantiate his allegations, although she determined that they had not been malicious, vexatious or retaliatory.

359. The evidence of Professor Ferran was that Professor McMahon had been within his rights to bring a complaint on the assumption it was not malicious or vexatious; it would have been extremely unusual for the University not have acted on a complaint as there is an assumption that people act in good faith and are genuine in what they are doing; and it was reasonable to allow to go forward and to be investigated. Professor Ferran told us that whereas whistleblowing protections are important they cannot be meant to be an act that is weaponised to prevent other people from bringing complaints.

360. We noted that Professor Ferran was asked four times in cross examination in the Tribunal hearing to confirm that at the time of making her decision there had been no evidence as to what allegations of the Claimant in the Delays Document had been false or unsubstantiated, or why. Professor Ferran, who had been an honest and a candid witness up to this point, was unable to answer that question and seemed to struggle. The question went unanswered despite being put clearly by Mr Brittenden KC on behalf of the Claimant. As it appeared that the question would remain unanswered, I asked Mr Brittenden to move on. We inferred that Professor Ferran did not want to say anything that might harm the University.

361. On the issue of whether Professor McMahon's grievance was retaliatory, Professor Ferran agreed with the investigation report that there was no evidence that he had been aware of the whistleblowing complaint prior to him making his grievance.

362. Professor Ferran was questioned about her view that Professor McMahon would not have known there would be an investigation into him, and it was put to her that the Claimant's email to him of 27 July 2021 must have alerted him to the possibility that an investigation was likely as it referenced a request from Professor Peake for the transcripts of recorded

meetings and the allegation of exceptionally cruel treatment of Dr Pebody; and asking him to step down whilst the matter was fully investigated.

363. Professor Ferran's evidence to us was that she did not accept that Professor McMahon could have formed the view that an investigation was likely. This answer did not seem credible given the contents of the Delays Document at least, let alone the Claimant's email to Professor McMahon suggesting he ought to stand down pending an investigation.

364. Professor Ferran told us that she considered whether she was dealing with a vexatious litigant or if it was possible to become vexatious retrospectively by not withdrawing a complaint having not provided supporting evidence, and her evidence was that HR and someone within the Legal Department advised her that vexatiousness was tested at the beginning of the process.

365. Professor Ferran said she formed the view that Professor McMahon had become paralysed and overwhelmed with everything going on, and whereas she formed the view he had not been deliberately malicious or vexatious, she queried this with Mr Scott-Joynt (via Ms Gardener in Legal) to which he replied that there was no evidence that Professor McMahon knew that there would be an investigation into the issues raised by the Claimant before he submitted his grievance on 29 July 2021, and Mr Soctt-Joynt had not considered the issue of whether Professor McMahon ought to have withdrawn his complaint.

366. On the issue of Professor McMahon being paralysed and overwhelmed, we were not satisfied that this was an accurate description because by the time of their meeting he had been asking about the possibility of withdrawing his complaint and it was HR which had resisted it in that meeting. Professor McMahon was clearly able to make decisions at that time but having raised the question about withdrawal which HR had resisted, he chose not to do so.

367. Whereas we have no doubt that Professor McMahon, given the circumstances and his heath did feel overwhelmed, this is not synonymous with someone being paralysed which we find to be an exaggeration and we reject the description.

368. As regards the allegation that the University had delayed the conclusion of the investigation into the Claimant's disclosures and Professor McMahon's grievance, Professor Ferran said she did have a question mark as it was strange to bring a complaint then not to present any evidence to Mr Scott-Joynt.

369. Whereas Professor Ferran said that some sort of withdrawal of the grievance by Professor McMahon may have been a symbolic admission of fault from him, she considered it was not justified as he had not behaved deliberately maliciously or vexatiously. The view of Professor Ferran was that everyone needed to draw a line and to move on.

370. Professor Ferran acknowledged that there were delays in providing her decision however she said that was a structural problem for the University generally who have very busy day jobs. Professor Ferran said that there

was no intentional delay and the Claimant's disclosures were entirely immaterial to the delays.

Attempt to appeal the grievance outcome decision of Professor Ferran – 22 July 2023

371. On 16 July 2023 the Claimant again asked Dr Michael Glover if and why the University was paying the Professor McMahon's defamation legal fees. Dr Glover replied to say he was not involved in the matter of the legal fees and he refused to engage further on the matter.

372. On 22 July 2023 the Claimant attempted to appeal the outcome of Professor Ferran into Professor McMahon's grievance and the determination that his allegations were not vexatious or malicious. This was put before Professor Munir, however on 26 July 2023 the appeal was rejected on the basis that as per the University's Dignity at Work Policy, only the complainant had the right to an appeal under that policy. The decision was taken with the assistance of Sarah Fecondi (Assistant Director of HR).

373. On 28 July 2023 the Claimant wrote to Dr Glover and said that the "extraordinary" decision to pay Professor McMahon's legal fees in the defamation case, supported by Dr Glover, and taken by conflicted individuals in HR and Legal (Ms Akroyd and Ms Gardner) was retaliation against him as a whistleblower and to cover up earlier wrong doing.

Meeting with Ms Rampton concerning the complaints about the whistleblowing investigation – 9 August 2023

374. A meeting took place on 9 August 2023 attended by the Claimant, Dr Pebody, Ms Rampton (R3) (Registrary), and Ms Fecondi from HR to discuss the Claimant's concerns from 15 June 2023 about the conduct of the whistleblowing investigation. The Claimant also queried whether the University had funded Professor McMahon's defence to the defamation claim, however Ms Rampton declined to deal with that issue.

375. The minutes of this meeting were never agreed and in the outcome letter Ms Rampton disagreed that there had been a health and safety emergency in July 2021 (although the report from Mr Scott-Joynt had indicated that it was reasonable for the Claimant to have concluded that Dr Pebody's health and safety were at risk or in danger).

376. On 20 August 2023 the Claimant wrote to Ms Rampton and Dr Glover (Academic Secretary) and the then Vice-Chancellor. The subject line of the email was Whistleblowing, and the Claimant wrote:

> *"Seven murdered babies. Attempts to murder seven more.*
>
> *The circumstances are all very familiar. The Whistleblowers were threatened with disciplinary action. There were two external reviews that whitewashed any wrongdoing.*
>
> *Still, Chester Hospital Trust look much better than Cambridge University do.*

The University really did subject the Whistleblower to a 2-year disciplinary investigation. When my
lawyers wrote to Prof McMahon asking him to retract his defamatory & retaliatory allegations, you even responded by sanctioning the payment of Prof McMahon's legal fees. We now know not merely was there no case, there was no evidence. Prof McMahon fabricated 18 retaliatory allegations against 3 people. And still his legal fees are being paid.

When this matter becomes public -- as now seems inevitable -- the University's actions will be impossible to justify.

There were not dead babies in Cambridge -- but there was very nearly a dead woman."

377. The evidence of Ms Rampton is that she found the email to be threatening and discourteous.

Second meeting between Claimant and Professor Harper – 6 September 2023

378. The Claimant attended a further meeting with Professor Harper on 6 September 2023 to discuss the grievance he had brought against Ms Hudson (Director of HR) over one year earlier on 30 August 2022.

379. As part of that process Emma Frampton wrote to Professor Peake on 15 September 2023 on behalf of Professor Harper and asked for additional information, and recording that his response would be shared with the Claimant and also Professor Haehnelt whom we understand had also lodged a grievance.

380. The response from Professor Peake was not shared with the Claimant at the time, and it was not even disclosed when the Claimant made Data Subject Access Requests to Professor Harper and Professor Peake separately. It was only after the Claimant made a complaint to the University Data Protection Officer that it was disclosed to him on 7 February 2025.

381. The University argues that this was an error and not intentional, however the Tribunal found this difficult to accept. Whereas it is conceivable that someone forgot to share it during the grievance process, it is not credible that the same errors were made repeatedly following repeated requests by the Claimant to two separate people. The fact that Ms Frampton had already warned Professor Peake that the response would be shared, this is a factor which caused the Tribunal to form the view that there was some concern within the University about what the Claimant might see. We simply could not accept that this was an inadvertent (and unexplained error) that was repeated so many times as it would imply a level of incompetence we are not satisfied exists within such a large and well-resourced institution.

382. The contents of Professor Peake's reply also caused us to query if the material was deliberately held back. Professor Peake failed to answer Ms Frampton's entirely relevant question about why informal resolution of Professor McMahon's grievance had not been attempted.

383. Ms Frampton also asked "*When you and Louise Akroyd spoke to Professor McMahon and it was decided that the allegations he had raised would be investigated formally, was Professor McMahon asked what evidence he had to support his allegations, or was he asked to provide evidence to support his allegations?"* Professor Peake's response was that he would not expect a complainant to provide detailed evidence at that point, he would need to be satisfied that there as a reasonable basis for the veracity of their concerns before setting up an investigation.

384. As the Claimant states in his evidence, Professor McMahon was making 18 allegations against 3 people, therefore he says that it would have been prudent to have asked for the evidence to establish if there was a reasonable basis for the veracity of the concerns. Professor McMahon was not asked by Professor Peake for evidence either at the time of filing that grievance, nor by the time of this meeting many months later, nor any follow up requests from Professor Peake and Ms Akroyd afterwards.

385. We noted that Professor Peake also asserted that the reason for proceeding to a formal investigation was because the Claimant and Professor Haehnelt had tried to bring a paper to a staff meeting which Professor McMahon had found disrespectful and challenging to his authority.

386. As the Claimant raises in his witness statement, the only matter which Professor Peake challenged him on at that time was the use of the word capricious in the document (which the Claimant removed) before going on to state that the Claimant had been immensely good and very generous in agreeing not to share it. This did not appear to be a consistent account from someone who was the Head of School and in a position of authority whereby he could have challenged the Claimant at that time if he held such serious concerns.

387. On 1 October 2023 the Claimant emailed Ms Rampton in which he argued that Professor McMahon's legal fees were still being paid whilst not having provided any evidence in support of his allegations. Yet again we could see that the Claimant was this issue informally to a number of people, including to Ms Rampton.

Professor Gilmore's grievance outcome letter

388. We note that on 11 September 2023 Ms Akroyd drafted an outcome letter on behalf of Professor Munir for the grievance brought by Professor Gilmore. The email was sent to Ms Hudson, Ms Gardner, Ms Niven, Ms Fecondi, Professor Munir, Ms Rampton, Dr Glover and an email address with the EAHRDirector instead of a name.

389. The email confirmed Ms Akroyd and Ms Gardner had drafted the outcome letter and that Ms Niven had added a couple of paragraphs at the end to encourage moving forward constructively. Professor Munir was asked *"Please let me know if you have any questions or comments, in particular in relation to the final couple of paragraphs, or any proposed changes before it can be finalised."* Ms Akroyd's evidence to us that this way of working was fairly typical and more or less standard practice. It

appeared to the Tribunal that this was another example of the process by which decisions were made by a group of individuals in HR in the name of other people which they were asked or invited to put their names to. We saw no evidence of Professor Munir reaching a decision first and then asking for HR help to draft it for him. This pattern of ghost writing and HR making other people's decisions for them did appear to be standard practice within the University's HR Department given how often it happened in this case.

Application for a review to the Commissary – 3 October 2023

390. On 3 October 2023 the Claimant applied to the Commissary, Sir Igor Judge, for a review into the conduct of the whistleblowing investigation whilst Ms Rampton was still reaching her decision on the Claimant's complaints about the conduct of that investigation. The role of Commissary is a quasi-judicial role within the University empowered to review decisions taken by the University in a limited set of circumstances.

391. The Claimant referred to Professor McMahon's grievance as malicious; he indicated that the grievance had been retaliatory against him as a whistleblower; he alleged procedural irregularities such as the involvement of Ms Akroyd whom he said had a conflict of interest as she was involved in some of the most contentious events; an alleged meeting outside of work hours between Mr Scott-Joynt and Ms Gardner in Legal; as well as other concerns about the handling of the investigation.

392. On 16 October 2023 the Claimant's application was struck out on the basis that the Claimant had a complete vindication with respect to the grievance against him; he had been provided with a clear decision on the grievance; and even if the investigation process was flawed, the Claimant won on every single allegation against him, and the verdict in his favour did not depend upon proof that Professor McMahon had been maliciously motivated to bring his grievance. It was further recorded that the Claimant's dissatisfaction with the process or findings did not render the outcome as ultra vires, illegal, irrational, nor procedurally irregular, and no basis for impugning it had been shown.

393. In addition, it was recorded that the application would also have been struck out as the Claimant had not first sought a review of the matter by the Vice Chancellor as required under Statute A IX 1(a).

394. The Claimant soon after commenced a period of sickness absence on 20 October 2023.

Outcome of Claimant's complaints into the whistleblowing investigation – 6 November 2023

395. Ms Rampton issued her outcome letter on 6 November 2023 dismissing the Claimant's complaint of 15 June 2023 in its entirety and this was almost five months since the grievance was issued. Ms Rampton attributed the delay due to correspondence from the Claimant concerning the defamation proceedings and use of the insurance policy in connection with those proceedings, and she tells us that these were serious matters which she considered thoroughly. However, the emails referred to were rather brief

and none of them were referenced in the eventual decision so we were not persuaded by Ms Rampton's evidence on that matter.

396. Within the outcome letter Ms Rampton disagreed that the Claimant had been subjected to a two year disciplinary investigation. Whereas it is accurate that the process took 18 days less than two years, and the process was a grievance investigation, nevertheless the outcome of that process could have led to disciplinary proceedings against the Claimant. We found from her comments that Ms Rampton did not appreciate how someone in the Claimant's position might be feeling after being subjected to such a long drawn out process.

397. Ms Rampton acknowledged the delays in the original investigation but found that there had not been a failure in process and she attributed the delays due to the Claimant insisting that the matter be dealt with under the whistleblowing policy; the Claimant's objections to the investigation being undertaken by B3Sxity; Mr Scott-Joynt's two family bereavements; considerable back and forth in agreeing notes of meetings.

398. Whereas part of the blame was attributed to the Claimant, Ms Rampton did not record Mr Scott-Joynt's finding that it had been correct to proceed under that policy. Ms Rampton also said the delay was due to acquiring some further information from Professor McMahon which we have found to be inaccurate as nothing was ever sourced from him, yet the process was allowed to go on as long as it did with no evidence ever being supplied.

399. We noted that there was no suggestion at all within Ms Rampton's outcome that any part of the delay was attributable to the University. This again fitted in with a pattern of those within the University seeking to blame the Claimant and avoiding any suggestion that the University might be to blame in any way. When asked in oral evidence about who had oversight of the process to prevent it drifting, we found Ms Rampton's evidence to be contradictory and unsatisfactory as she disputed that there had been any drift, and when asked how she knew, she told us she was not the appropriate person to comment and had not been involved. We found the evidence did not make any sense, and it gave the impression of having been made up on the spot to protect the University.

400. Ms Rampton also rejected the argument that Ms Akroyd's involvement in preparing the terms of reference for the investigation undermined their integrity, and this was on the basis that it was Kaitlin Birrell who was primarily involved in preparing them. Nevertheless, and as the Claimant points out in his witness statement, Ms Akroyd had created the original terms of reference; Ms Akroyd managed and supervised Ms Birrell; and Ms Akroyd had other involvement including setting up Mr Scott-Joynt's investigation.

401. Ms Rampton determined that once Ms Akroyd had been identified as a possible witness (in the grievance) she had no further involvement in terms of coordinating the investigation process and she did not provide any support to either Dr Glover or to Mr Scott-Joynt.

402. We have put to one side emails from or involving Ms Akroyd in February 2022 setting up the investigation as it may not have been sufficiently clear

that she would be a witness at that time. However, there were numerous emails in August, September and October from Mr Scott-Joynt to Professor McMahon and Ms Akroyd asking for information and evidence; there was a meeting between Ms Akroyd, Ms Gardener and Mr Scott-Joynt on 22 August 2022; and an email of 22 June 2022 Professor McMahon wrote:

> *"I am conscious of the burden these proceedings have put on Louise Akroyd and she has provided me with 1:1 support in Nov/Dec which I am very grateful for. Following our meeting last week, she has offered to support me again with 1:1 meetings."*

403. Clearly the support offered by Ms Akroyd had taken place possibly before she was identified as a witness which is entirely understandable and normal in such matters, however the latter part of the extract from the email is indicative that there had been ongoing support. This appeared to contradict the determination from Ms Rampton. This has called into question whether Ms Rampton was aware of such support, or whether she had carried out sufficient enquiries before reaching her decision.

404. In any event, the terms of reference did not incorporate the Claimant's concerns about Professor Peake's involvement (nor that of Ms Akroyd or Ms Birrell) which went uninvestigated. Ms Rampton conceded in her oral evidence to us that some matters had not been considered in the investigation although it was not explained to us why that was the case. This was suggestive to us of a closed mind when it came to issues the Claimant was raising and a desire not to look and to try and shut things down in order to protect the University, which is another patten which the Tribunal has noted.

405. Ms Rampton rejected the argument that Professor McMahon had fabricated 18 retaliatory allegations against the Claimant and others. Within the outcome letter Ms Rampton found Professor McMahon would not have been on notice that the Claimant had made a protected disclosure as she said his email of 27 July 2021 did not state expressly or by implication that he had done so.

406. Ms Rampton maintained this position in her oral evidence that there was no reason for Professor McMahon to have thought that there could be an investigation. However, the difficulty is that Mr Scott-Joynt did not ask Professor McMahon about the email, nor did Ms Rampton, nor did anyone else in the University. It is difficult to see how the University could have formed the view about what Professor McMahon knew, or what he understood that email to mean, if they did not ask him about it.

407. In addition, there did not appear to be any consideration of the outcome of the defamation proceedings whereby Professor McMahon had accepted that the allegations at least against the Claimant were un untrue. This is not something which Ms Rampton appears to have given any thought to either.

408. Ms Rampton also expressed that many of the issues raised by the Claimant were historical in nature.

409. We noted the tone of Ms Rampton where she recorded "*I have already expressed my concerns regarding your continuing to make a number of factual assertions which are inaccurate"* and she went on to state that she would take the opportunity to make some observations of the Claimant's conduct in the proceedings. This tone implied a level of frustration and annoyance on the part of Ms Rampton. We noted that this represented a marked change in tone.

410. Firstly, Ms Rampton referred to section 6 of the Dignity at Work Policy and alleged that during their meeting on 9 August 2023 the Claimant had held his hand in front of Dr Pebody's face stating she should not speak. The Claimant for his part disputes this and says that there had been a general commotion in the meeting caused by an inappropriate intervention by Ms Fecondi, and he had raised his hand to maintain peace as it was meant to be a meeting about his whistleblowing and not Ms Fecondi's opinions, and Dr Pebody did not consider it to be disrespectful nor discourteous. We note that Dr Pebody's witness statement was very supportive of the Claimant and does not suggest any inappropriate conduct by him towards her.

411. Ms Rampton further referenced the email from the Claimant of 20 August 2023 in which he had referenced events at the Chester Hospital Trust. Ms Rampton said that the Claimant had drawn comparisons with how the University had acted in his case, and she considered the tone of the email to be threatening and discourteous in nature and the analogy to the Letby murders to be both unwarranted and ill-advised. The Claimant's evidence to us was that:

> *"The fate of most whistleblowing investigations is well-known and the analogies to other cases are entirely warranted: they often become prolonged, mismanaged and fail to protect those raising concerns. The Post Office scandal provides an even more striking comparison, particularly in its depiction of senior management being "led by the nose by its own middle management & in-house and external legal advisors" (Ron Warmington). This vividly illustrates how institutional hierarchies and legal gatekeepers distort, delay or undermine an investigation, leaving the whistleblower vulnerable and the truth obscured. Systemic pressures and misjudgments can arise when organisations, whether the University of Cambridge or the Post Office, prioritises reputation and procedural formalities over fairness and accountability."*

412. The Tribunal was surprised by Ms Rampton's comments that the Claimant's reference to the Chester Hospital Trust matter had been threatening as she alleged. Leaving aside whether the tone of the email had been unwarranted and ill-advised, which is finely balanced but are not matters we need to determine, the allegation that the Claimant had been threatening did appear to the Tribunal to be an exaggeration.

413. On 2 January 2024, after returning from sick leave, the Claimant sent a detailed 22 page response to Ms Rampton where he challenged these matters and others, however on 19 January 2024 Ms Rampton recorded that the appeal process had been exhausted and she would not correspond further on the matter.

Application to Vice-Chancellor for a review – 14 November 2023

414. Following on from the outcome of Ms Rampton of 6 November 2023 concerning the conduct of the whistleblowing investigation, on 14 November 2023 the Claimant submitted an Article A IX application to the Vice-Chancellor, Professor Prentice (R4) for a review of the University process concerning the handling of the whistleblowing investigation. The Vice-Chancellor has the power under Statute A, Chapter IX to investigate whether there have been breaches of the University's Statutes and Ordinances.

415. The Claimant again asserted that the whistleblowing investigation was vitiated by narrow terms of reference; improper involvement of conflicted individuals; and the behaviour of the investigator.

416. Professor Prentice's evidence to us was that she had thoughtfully considered the Claimant's correspondence in detail before responding to him and explaining the jurisdiction of her role under the Statutes, Ordinances or Orders.

417. The Claimant's application was rejected on 21 November 2023 on the basis that the alleged contraventions of the Whistleblowing Policy did not form part of the Statutes, Ordinance or Orders therefore it did not require her to engage with the substantive grounds of complaint or the subject matter.

418. The Claimant resubmitted his application on 4 December 2023 arguing that he was appealing about the conduct of the Registrary which he said fell within Statute C, Chapter VI which provides that *"this Statute and any Ordinance made under this Statute shall be construed in every case to give effect to the following guiding principles, that is to say… (c) to apply the principles of justice and fairness"* to be read alongside Statute C, Chapter I.

419. Professor Prentice also rejected the appeal on the basis that whereas the Registrary is required to act fairly when performing functions under the Whistleblowing Procedure, the obligation does not derive from the statutes themselves.

Eighth alleged protected disclosure – grievance of 12 December 2023

420. The Claimant made repeated queries about whether the University had allowed Professor McMahon to make use of its insurance policy in his defence to the defamation proceedings. On 26 October 2022 Dr Glover replied:

> *"I am advised that I am not able to respond to your question as this is information to which you are not entitled, for example because information of this nature constitutes Professor McMahon's personal data."*

421. On 21 July 2023 Dr Glover replied to a further query and said:

“I have had no involvement in the legal proceedings you have brought against Professor Richard McMahon and in particular I have not been involved in any decision regarding the University’s insurance.

As I have previously stated, I am not prepared to engage further on the subject of Professor McMahon’s legal fees.”

422. The Claimant made similar requests to the Registrary on 9 August 2023, and the Vice-Chancellor on 26 October 2022 which did not result in any substantive answer. What is clear however is that the Claimant made repeated attempts to raise the issue informally to various people.

423. On 12 December 2023 the Claimant filed a grievance with Professor Prentice the Vice-Chancellor against unidentified individuals within HR and the Legal Services and against Dr Glover, and Ms Rampton, concerning the possible deployment of the University’s insurance policy in support of Professor McMahon in the defamation proceedings.

424. The Claimant stated that this was a grievance against:

“(i) unknown individuals in HR/Legal, who — sometime in August 2022 — allowed Prof Richard McMahon to make inappropriate use of the University insurance policy for lawyer’s fees, and against (ii) both the Academic Secretary and the Registrary who allowed this situation to persist, despite being legally responsible for the protection of Whistleblowers.”

425. This grievance was quite clearly directed at the University and not Professor McMahon.

426. In his grievance the Claimant said that Professor McMahon had issued a grievance against him others containing at least 18 serious allegations; it was made in response to the Claimant’s protected disclosure about Professor McMahon’s treatment of Dr Pebody; an investigation was commenced without any evidence having been requested nor provided; and after the Claimant lodged defamation proceedings, Professor McMahon was permitted by unknown individuals with HR and the Legal Department to make use of the University’s insurance policy. It was absolutely clear that this was a grievance against the University, it was not a grievance against Professor McMahon, it was separate to the previous complaints and/or concerns which had been raised about him.

427. The Claimant said that Professor McMahon was invited to withdraw his allegations but refused to do so; the use of the policy prevented early settlement of the dispute which was a misuse of public money and the University should never have been involved funding one employee against another in what should have been a neutral grievance process; and the University supported spurious and dishonest allegations which was breach of the Claimant’s rights and a gross misuse of public resources.

428. The Claimant further said that Professor McMahon’s allegations had been held by a court to be defamatory and he had conceded the allegations were not true; the grievance had been raised in a personal capacity not

consequent to his duties as a Director of the Institute; the Claimant had repeatedly queried the use of the insurance policy and he had repeatedly alleged that it was inappropriate and retaliatory to him as a whistleblower.

429. Furthermore, the Claimant said that whereas this had been raised with the Academic Secretary and the Registrary, they both failed to take action nor confirm who had authorised the use of the policy; and it had been raised with the Vice Chancellor who had yet to reply.

430. The Claimant's evidence is that his grievance was a protected disclosure as it related to a potential criminal offence of fraud; it related to a possible failure to comply with legal obligations – namely the insurance contract; and (iii) concealment of information tending to show those things. The Claimant says that the disclosure was made in the public interest as the University receives substantial public funding for its stated purpose to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

431. The Claimant further says that Professor McMahon conceded that his allegations were not true and that the University had resisted disclosure of pertinent information and was involved in a possible cover-up (or concealment) and it may be involved in a potential criminal offence as the University was unlikely to have informed the insurers at the outset the true position that Professor McMahon had provided to no evidence, or to have kept the insurer fully informed about the progress of the case at all required times which he says maybe even an amount to insurance fraud.

432. Within his closing submissions the Claimant no longer seeks to argue that the information tended to show concealment of a criminal offence.

433. The Claimant's evidence was that insurance contracts are made *uberrimae fidei* (utmost good faith or of the fullest confidence) and the policy holder is under a duty to disclose significant facts which may impact the insurer's willingness to pay under the policy. The Claimant has said that the University would have had knowledge from 29 July 2021 of the absence of evidence from Professor McMahon, as well as his repeated failure to particularise his grievance; and also Mr Justice Linden's characterisation of his statements as defamatory on 24 April 2023, the Claimant says that there are serious questions as to the propriety of the University's actions under the insurance policy and what information it disclosed to the insurer.

434. The crux of the Claimant's grievance was that the University was being accused of allowing Professor McMahon to make inappropriate use of the University's insurance policy.

435. We record that by this time no one within the University had explained to the Claimant why Professor McMahon had been allowed to obtain the benefit of that insurance policy, for the most part there was a wall of silence and refusal to even acknowledge that it had been used at all.

Outcome of 12 December 2023 grievance – issued 19 January 2024

436. Professor Prentice (R4) then passed the Claimant's 12 December 2023 grievance to Ms Rampton, the Registrary, (R3) who subsequently rejected

it on 19 January 2024 even though she was named as one of the people being complained about as the Claimant alleged she had taken no action in respect of him raising the use of the insurance policy. It appeared to the Tribunal that there was a clear conflict of interest in having people determine the outcome of complaints about them.

437. Ms Rampton rejected the Claimant's grievance on the basis that it was not valid and would not be considered as a freestanding grievance under Special Ordinance C (xii) of the University's statutes, or at all, as he had not attempted to raise these matters informally first pursuant to paragraph 9 of Special Ordinance X (xii).

438. The outcome letter went on to refer to observations that the fees related to a private dispute between the Claimant and Professor McMahon which had been settled on 15 November 2023; that it was surprising to pursue to a grievance about matters which had been settled; the subject matter was highly historical in nature; and the issues between the Claimant and Professor McMahon had already been thoroughly investigated by Mr Scott-Joynt under the Dignity at Work and Whistleblowing procedures.

439. Ms Rampton said that the University considered the matter closed and that it would not be corresponding further. The evidence of Professor Prentice on this point was the same.

440. We were referred to the email from Ms Rampton (R3) to Professor Prentice (R4) dated 19 January 2024 in which she said:

> *"I mentioned this morning the letter from Wyn Evans complaining about the use of the University's insurance policy in relation to the defamation claim (see pdf attached). We've drafted a response (word doc attached) which, as discussed, I'll send on your behalf. For completeness, I also attach his chaser of today. Please let me know if you have any concerns. Ideally we'd like to get the response out today if possible. I should also have mentioned the application he made to you under Statute A IX, to which you responded in November. There is a follow up to that needed as well so I'll send you a separate email on that topic"*

441. The evidence of Professor Prentice was:

> *"My response to the grievance dated 12 December 2023 was drafted with the assistance of Emma Rampton (Third Respondent and University Registrary) and subsequently sent to Professor Evans in Emma's name on my behalf. I worked closely with Emma when considering my response to Professor Evans' grievance to understand the history of the case (which had pre-dated my arrival at the University), the efforts that had been made to address the issues raised previously as well as what was appropriate under the University's Statutes and Ordinances."*

442. Ms Rampton's evidence to us was that the outcome of the grievance was sent out in her name on behalf of the Vice-Chancellor and the University, and as the University's principal administrative officer she would

often send formal responses on the Vice-Chancellor's behalf in relation to procedural issues.

443. We reject the evidence of Professor Prentice as we find the response was not drafted with the assistance of Ms Rampton, rather we find that it was written solely by Ms Rampton and then presented to the Vice Chancellor as a *fait accompli*. Professor Prentice had very little to do with it, save for putting her name to it.

444. As to the reasons for the decision, Ms Rampton's evidence to us was that the Claimant was again trying to resurrect historical issues that had already been the subject of extensive investigation, the matters raised related to "highly historical" issues dating back to July 2021 which had already been addressed. Ms Rampton also told us that she was surprised to see the Claimant was pursuing a formal grievance in relation to the Professor McMahon's legal fees as she understood that a conclusion had been reached between the parties pertaining to the "private legal dispute" between the Claimant and Professor McMahon. Ms Rampton said that the raising of the grievance came shortly after settlement of the proceedings and the Claimant seemed to be contradicting his expression that he wanted to achieve closure by reigniting further issues.

445. The response Ms Rampton gave to the Claimant in his grievance, and the evidence she gave to us in the hearing on this issue, was inaccurate. Ms Rampton is a solicitor and is clearly highly intelligent and sophisticated, and she would have known or understood that the Claimant was not complaining about Professor McMahon – he was complaining about the University which was not a party to that claim and thus nothing had been settled between the Claimant and the University. Ms Rampton would also have understood that the Claimant was complaining about her conduct as Registrary amongst others.

446. Moreover, Ms Rampton would have known full well that the Claimant had raised the matter informally before, he even tried to do so with Ms Rampton, as well as other people – it was expressly referred to in the grievance that he had raised the issue of the insurance and no one would engage on the matter. We again found Ms Rampton's evidence to be unsatisfactory as the outcome decision, and her evidence to us about the Claimant not having raised matters informally, were quite clearly incorrect and it should have been obvious to her. It appeared to the Tribunal that again this was another attempt to try and shield the University from criticism.

447. We noted that Ms Rampton had not addressed what the Claimant was complaining about. The Claimant was complaining that this was a private legal dispute which the University had involved itself in by allowing Professor McMahon to use its insurance policy. To dismiss the grievance because it was about a private dispute simply failed to grapple with what the complaint was about in the first place – namely the involvement of the University in that private dispute.

448. It appeared clear that Ms Rampton had unlikely uncovered the email from Professor Reynolds of 23 April 2023 where he reported that Professor McMahon was complaining about the pressure being applied to him by the University to fight the legal claim. This was suggestive that the University,

likely the HR Department, were not treating this purely as a private matter if Professor McMahon felt that they were applying pressure to him. If the investigation had been undertaken with more rigor by someone independent, it is possible that this might have been uncovered and explored, however that did not happen.

449. Likewise, it was difficult to understand how Ms Rampton could have formed the view that the grievance was about a historical matter when the insurance policy had continued to support Professor McMahon until the month before the grievance outcome. Clearly this was far from historical. Moreover Ms Rampton said that the matter had been the subject of an extensive investigation, however that is wrong. The specific matters being complained about had never been investigated at all.

450. The Tribunal was also surprised by Ms Rampton's oral evidence to us that she had in fact looked into why the insurance cover was made available to Professor McMahon and that she found that this was due to his status as an employee. We found it hard to understand why Ms Rampton did not just say so and provide that answer in the grievance outcome, rather than looking for reasons why the grievance could not be heard. This did cause the Tribunal to question the motivation at play when the question could have been answered quickly and succinctly – again it appeared that the overarching concern was to shut things down, to bring an end to any further criticism or challenge in order protect the University.

451. We further noted the evidence of Professor Prentice who told us in her witness statement that she took steps to understand the history of this complaint, however she accepted in her oral evidence that the only documents she likely saw were the grievance and Ms Rampton's draft outcome and we noted that was received at around 11:19 only a few hours before the decision was issued at 2:39pm. It did not appear to us that many steps were taken to understand the history of the matter.

452. We also noted Professor Prentice's evidence that the issues the Claimant was complaining about had already been thoroughly considered under the Claimant's whistleblowing complaint and Professor McMahon's grievance, and further she was concerned with following University procedures and achieving finality in proceedings which had already been intrinsically and thoroughly investigated. It appeared to the Tribunal that whereas wanting finality is understandable once there has been an investigation or a substantive answer to a complaint, where complaints are shut down prematurely this is likely to be more about minimising criticism than achieving finality.

453. Professor Prentice was asked in the hearing, if that was the case, who then investigated it and when, and what was the outcome – however Professor Prentice could not tell us. We find that this is because the specific matters being complained of in this instance had never been investigated, and again it appeared to us that the shared concern was to shut things down, and to not give answers to the Claimant in order to stifle or bring to an end any challenge or criticism.

454. The Claimant wrote to Professor Prentice on 12 February 2024 to challenge her outcome and he also stated that Statute 3 provides that the

Statute and Ordinances made under it should be construed in every case so as to apply the principles of justice and fairness, and this includes cases of whistleblowing. The Claimant also complained that the outcome of his grievance of 12 December 2023 had been responded by the person who was the subject of the complaint.

455. Professor Prentice responded on 16 February 2024 declined to take any action on the matter indicating that the matter was now considered closed.

456. On 17 June 2024 the Claimant wrote to Professor Prentice about appealing the decision of Professor Ferran of 11 July 2023 under the Whistleblowing Policy. The Claimant had referred the matter to the Commissary in October 2023 who was unable to act as the Claimant had not raised the matter with the Vice-Chancellor first. The Acting Commissary informed the Claimant that there was no jurisdiction to consider employment disputes and these matters fell outside of his jurisdiction. In addition, on 16 October 2023, Sir Igor Judge informed the Claimant that the Vice Chancellor has jurisdiction over employment matters whereas the Commissary does not.

457. By correspondence dated 28 June 2024, Professor Prentice declined to take any further action, referring to the limits of her powers of review under Statute A IX of the University's Statutes and Ordinances. Professor Prentice explained that, before exercising that power, she was required to consider whether the matters complained of constituted either an act undertaken by a person or body exercising powers under the University's Statutes, or a failure to act where such action was required by a Statute, Ordinance or Order.

458. Professor Prentice recorded that the matters raised by the Claimant did not fall within the scope of that provision and that she was therefore not obliged to review the case under the University's Statutes and Ordinances. In addition, Professor Prentice further advised the Claimant that, in any event, the time for seeking such a review had long since expired, noting that any such complaint ought to have been made within 30 days of the relevant events and thus she indicated that she regarded the matter as closed.

Outcome of grievance against Ms Hudson – 15 May 2024

459. The outcome letter from Professor Harper was received 624 days after the grievance had been lodged on 30 August 2022. The Tribunal found this level of delay to be staggering.

460. Whereas the Claimant attended two meetings of two hours with Professor Harper on 9 May 2023 and 6 September 2023, no meetings took place with Ms Hudson, Ms Akroyd, Professor Peake and Mr Scott-Joynt – rather they were only asked for input by email by Professor Harper.

461. We noted that Ms Hudson and Ms Akroyd took a long time to respond to Professor Harper's queries. The request to Ms Hudson of 31 March 2023 were responded to on 17 July 2023, and Ms Akroyd responded to the request of 27 July 2023 on 22 September 2023. Mr Scott-Joynt's responses were very prompt and he responded to a request of 21 August within four days on 25 August 2023. The further enquiries made of Ms Hudson and

Professor Peake in September 2023 were responded to promptly within a few days.

462. Ms Hudson confirmed that there was no procedural requirement for documentary evidence to be provided on the same day as a complaint submitted and it is normal for it to be provided after an initial complaint has been submitted and as part of the investigation process.

463. Ms Hudson attributed some of the delays to the Claimant insisting that his concerns be dealt with under the Whistleblowing Policy rather than the Dignity at Work Policy, and she said he would still have been protected under the Whistleblowing Policy where relevant.

464. Ms Hudson said she had not been involved in decision making; she disagreed that Ms Akroyd was conflicted but said that in any event she stood back once it became clear that she would be a witness; the Dignity at Work Policy does not provide that the Director of HR will deal with a complaint involving the Head of an Institution; she said that the Claimant sent his complaint to the Head of School, and we note that the Claimant says it was not a complaint but a response to a request for information; and the Dignity at Work Policy does not prevent someone making a complaint on someone else’s behalf. The Claimant disagrees with all of these matters however it is unnecessary for us to go through them all in detail.

465. Ms Akroyd responded that the Dignity at Work Policy did not require a complaint to be dealt with informally in the first instance, although it should be done where appropriate – although there will be circumstances where it is not appropriate or the preference of the complainant.

466. Professor Harper issued the outcome letter on 16 May 2024 after being provided with comments from Ms Gardner the in-house solicitor. We draw no negative inference from the act of seeking legal advice as it is normal to seek legal input on matters like this. The comments from Ms Gardner have been redacted as they are entitled to be on the basis of legal privilege.

467. We nevertheless acknowledge that Ms Gardner provided legal support to various different people in this matter at different times and with respect to overlapping complaints about them, and this is a factor we take into consideration when turning our minds to the issue of whether this forms part of what the Claimant argues to be Groupthink or organisational enmity on the part of the Respondents and their witnesses towards him as a whistleblower.

468. The outcome letter from Professor Harper dismissed the Claimant’s grievance however it appeared to be based on a false premise that Professor Peake had taken into account the circumstances of the bringing a paper by the Claimant and Professor Haehnelt to an Institute staff meeting. This was an obvious error – the paper was never brought to a meeting, and further the staff meeting did not even occur. Given the amount of time taken to produce this outcome, it was a concern that errors of that nature had arisen.

469. Professor Harper determined that he could find no evidence of repeated and extremely serious breaches of HR confidentiality, however we found

this outcome to be troubling because on 9 May 2023 the Claimant had told him about Professor McMahon discussing his grievance with Dr Walton and Ms Macharia; and on 6 September 2023 the Claimant told him that there had been 8 breaches by Professor McMahon whose *modus operandi* he said was to breach confidentiality and to smear and disparage colleagues, and the Claimant said he had raised it with Ms Hudson who said that Mr Scott-Joynt should investigate it but he declined on the basis it was not within his terms of reference.

470. Professor Harper confirmed in his oral evidence to us that he drew a line under Mr Scott-Joynt's investigation rather than to interview Professor McMahon. Professor Harper said he did raise the issue of confidentiality with Ms Hudson and Mr Scott-Joynt, however he agreed that the latter was not tasked with investigating those 8 breaches.

471. Professor Harper eventually conceded before us in the hearing when the question was repeated to him in cross examination, that no-one investigated these alleged breaches. Accordingly, the determination that there was no evidence of repeated or serious breaches of confidentiality was because no one had attempted to look into them in the first place. As such the Claimant's concerns had been rejected out of hand with no examination.

472. It was wrong of Professor Harper to state to the Claimant, and to maintain before this Tribunal, that there was no evidence of something when he had not properly tried to look into it. We found Professor Harper's evidence not to be satisfactory as he was less than candid on matters such as this which required much prompting to uncover the fact that certain matters had not been investigated at all.

473. Professor Harper partially upheld the part of the grievance which respect to delays and found that there could have been improved communications but that there were legitimate reasons for the delays; there was no evidence that Professor Peake had not acted in good faith. Whereas Professor Harper recorded there was no requirement for Professor Peake to give reasons for instigating the investigation, the Claimant had been challenging the decision not to use the informal stage as envisaged by the policy. This was not addressed by Professor Harper.

474. Professor Harper said that he found no evidence that Ms Akroyd had been conflicted nor that she sought to influence Professor Peake's decisions inappropriately.

475. Similarly, the Claimant had been complaining and asking why Professor McMahon's grievance had been allowed to proceed without any supporting evidence. Professor Harper's determination was that the policy says that complaints should include supporting evidence rather than must, and that it would be for the investigation to obtain the evidence.

476. Yet again the Claimant's complaint was more nuanced than that – he was clearly complaining that the investigation was commenced and then **allowed to continue** in the absence of any evidence at all, and the question of what allegations in the Delays Document where false and/or unsubstantiated was never resolved.

477. Professor Harper did not address this save for his reference that it would be for the investigation to obtain and evaluate the evidence. This outcome appeared to be a gloss on what was a quite specific complaint from the Claimant that the complaint against him was **allowed to continue** unevidenced, and as such the Claimant's complaint remained unanswered.

478. Moreover, the Claimant had complained about the three month delay in informing him of Professor McMahon's grievance against him, and Professor Harper's outcome was that this was a consequence of the difficulty in resolving this complexity rather than a failure of responsibility from the HR Director. This outcome did not address the allegation, it was syntactically challenging, and it has been described by the Claimant as a non-response, and we agree with that description. It appeared to be simply deflective without any attempt to engage with the issue – to put it another way, it was brushed under the carpet and gave the clear impression of wanting to shut this down without giving the Claimant a response.

Appeal against the decision of Professor Harper – 20 May 2024

479. The Claimant filed an appeal on 20 May 2024 and this was investigated by Charlotte Goodman of Cloisters Chambers, and the outcome was received on 26 January 2026 which was another considerable delay.

480. Ms Goodman identified insufficient investigation on the part of Professor Harper as regards his consideration of the complaint that Ms Hudson had failed to discipline Professor McMahon for repeated and extremely serious breaches of HR confidentiality, and she recommended upholding this part of the appeal and recommended a further investigation of that issue.

481. Ms Goodman's recommendation was later rejected by Professor Andrew Flewitt who had been appointed as Chair of the Grievance Appeal HR Committee. It was Professor Flewitt's determination that the investigation by Professor Harper did not ignore evidence that the Director of HR failed to discipline Professor McMahon for alleged repeated and serious breaches of HR confidentiality as it was not the responsibility of the Director of HR, against whom the grievance is made, to discipline him – rather the responsibility rested with Professor Peake as Head of School.

482. Whereas that outcome may restate the lines of responsibility it did not even attempt to address the crux of the complaint which was the failure to deal with the alleged breach of confidentiality by Professor McMahon. The decision itself does not form part of the subject matter of this claim, as the complaint before us was the alleged failure to hear the appeal against the grievance outcome of Professor Harper of 20 May 2024, nevertheless it added to the impression of things raised by the Claimant being ignored and brushed under the carpet by the University, and again clear attempts to shut this down, and to limit challenge and criticism which could harm the University arising out of the Claimant's protected disclosures. Nevertheless, the Claimant did receive an appeal.

Grievance against Professor Peake and Ms Akroyd – 2 September 2024

483. The Claimant filed a separate grievance on 2 September 2024 concerning the following:

i. Professor Peake knew that bullying was taking place creating a health and safety emergency but failed to intervene;

ii. Professor Peake was cognisant of an illegitimate process to dismiss Dr Pebody but failed to act to prevent it;

iii. Professor Peake authorised an investigation of a complaint despite no evidence being presented and despite his knowledge that Professor McMahon had bullied Dr Pebody;

iv. Ms Akroyd failed to discharge her duties competently and her lack of professionalism was a danger to others and the University;

v. Ms Akroyd allowed Professor McMahon to misuse an unlawful redundancy process to coerce and psychologically violate another member of staff; and

vi. Ms Akroyd and others within HR and the Legal teams, permitted Professor McMahon to make use of the University insurance policy to pay his legal costs.

484. On 1 October 2024 Professor Munir refused to allow the grievance to proceed on the basis that the matters had already been addressed following his initial complaint of 2 August 2021 and the subject of Mr Scott-Joynt's investigation, and then considered by the Academic Secretary.

485. As regards the allegations against Professor Peake, the decision of Professor Munir was that the issues had been considered and dealt with following his initial complaint of 2 August 2021 which had been investigated under the whistleblowing procedure by Mr Scott-Joynt, whose report was then considered by the Academic Secretary, Dr Glover, and then considered on appeal by the Registrary (Ms Rampton). Professor Munir said that the allegations against Ms Akroyd had been previously considered and dealt with by the University by various means.

486. This is inaccurate – the investigation did not consider the issue of insurance, nor did the terms ever provide for an investigation of Professor Peake and Ms Akroyd's specific involvement.

487. In addition, Mr Scott-Joynt had been very clear and careful that he would not expand his investigation beyond that which he had been commissioned to deal with. This was evident in his earlier email of 3 April 2022 to the Claimant where he explicitly said:

> *"Any issues pertaining to the process of the University's handling of your complaint prior to my appointment don't form part of my terms of reference, which (in response to your request) I attach. Consequently, I will not - unless those ToR were to be amended –*

enquire into those issues. They're not germane to the substance of either your complaint or Prof McMahon's, and it's important not to allow "mission creep"."

488. It appeared clear to the Tribunal therefore that the things being raised by the Claimant in his grievance of 2 September 2024 had not been investigated, and they were not now going to be investigated either.

489. Professor Munir told us in his evidence that the outcome letter had been drafted for him by HR, although we do not know who. In any event it appeared to the Tribunal that Professor Munir again simply allowed HR to make this decision which he then put his name to. Professor Munir displayed no evidence of actually having played any part in this decision which is matter of concern given that the Claimant would have been under the impression up to these proceedings that he had been the decision maker. As it stands, we do not know who that person was, other than they worked within the HR Department.

490. On 30 September 2024 the Claimant also raised delays in the handling of his grievance against Professor Peake and Ms Akroyd with Professor Prentice. This matter was being considered by Professor Munir, and Professor Prentice did not respond. The Claimant made further attempts to engage on this matter on 6 and 14 October when he said that he was engaging in ACAS proceedings against Professor Prentice.

491. This appears to have prompted Professor Prentice to respond the following day on 15 October 2024. It was the evidence of Professor Prentice that someone else had drafted the letter for her, however we do not know who that person is. They could have been someone in HR, and they could have been the same author as for Professor Munir's outcome letter which he accepts he did not write.

492. Whereas Professor Prentice gave evidence to us that she had then undertaken a full review of the papers, we find that highly unlikely given the volume of material going back very many years and the time and effort that would have taken for anyone, let alone someone in Professor Prentice's very senior position. The fact that a draft outcome had been prepared for Professor Prentice was indicative to us that there had not been a full review of the papers, at least not by Professor Prentice.

493. In the response prepared for Professor Prentice which she put her name to, it stated that she was satisfied that the matters concerning Professor Peake and Ms Akroyd had been sufficiently considered. Professor Prentice's evidence to us was that she was satisfied upon careful review that there had been no contravention of Special Ordinance C (xii) and that any contravention was of no effect given the matters had been considered previously.

494. It was also the evidence of Professor Prentice that she was conscious to bring finality to proceedings with respect to complaints that had been raised and pursued over many years, but in her view the Claimant was continuing to raise matters which had been investigated, and it was important for closure to be reached and for all parties could move on from matters she considered had been investigated and concluded.

495. We agree with the Claimant that it appeared that the outcome was simply to adopt Professor Munir's letter with little independent or additional assessment by Professor Prentice. We again record that this also fitted in with the pattern not merely of persons unknown writing other people's decisions for them, but also it was part of what has become clear pattern of trying to shut down the Claimant's complaints, and to protect the University from any possible damage arising out of the Claimant's protected disclosures.

Use of the University insurance policy

496. As regards the use of the University's insurance policy, Harry Halls was employed within the University's Insurance Section and, at the material time, held the role of Insurance Assistant. Mr Halls' role at the time included handling insurance-related enquiries and dealing with legal claims brought either against the University or against its employees. This involved notifying insurers of claims, identifying the relevant insurance policy, and facilitating communication between the insurer and those involved in the proceedings.

497. Mr Halls' evidence was that the University maintains a large number of insurance policies, typically around 30, which may be engaged where legal proceedings arise involving the University or its staff. The University's Financial Regulations require that potential or actual claims be notified promptly, either via Legal Services or directly to the Insurance Section. In accordance with standard practice, the Insurance Section then reviews the claim to determine which policy may apply and refers the matter to the relevant insurer.

498. The insurer, rather than the University, determines whether the policy covers the claim. If cover is accepted, the insurer ordinarily appoints panel solicitors and retains control over the conduct of the defence. Where proceedings are brought against an employee, the employee is offered the opportunity to accept representation via the insurer, but the contractual relationship remains between the insurer and the University.

499. On 16 August 2022, the defamation proceedings brought by the Claimant against Professor McMahon were served upon him and he notified the University's HR and the claim was passed to the Insurance Section. Mr Halls then reviewed the papers and, consistent with standard procedure, referred the matter to the University's insurer, Zurich, under the relevant Libel and Slander policy. Zurich considered the claim and confirmed that the policy provided cover for defamation claims of this nature, and it also set out the terms upon which cover was to be provided, including that it would retain full control over the defence of the proceedings and that cover might be withdrawn in certain circumstances, in particular if the claim involved malicious falsehood.

500. Following this confirmation, and after Professor McMahon indicated that he wished to rely on the insurance cover, Zurich appointed panel solicitors to act in the defence of the claim. Throughout this process, the University acted as the insured party, requesting cover on behalf of its

employee, but the decision whether to provide cover remained with the insurer.

501. Mr Halls' evidence was that there was nothing unusual about the handling of the defamation claim, and he stated that it is standard practice for the University's insurance policies to be engaged, where applicable, in defending claims brought against employees acting in the course of their duties. Mr Halls was clear that no separate or discretionary approval was required within the University for the policy to be used: once a claim was notified, the determination of cover lay with the insurer in accordance with the terms of the policy.

502. Mr Halls further explained that the policy operates to indemnify the University, with the benefit of that cover extending to employees, but that employees themselves do not hold contractual rights under the policy. Mr Halls also made clear that the purpose of such policies is to fund the defence of claims, not to fund the bringing of proceedings by employees. Accordingly, if proceedings had been brought against the Claimant in comparable circumstances, he too would have been able to benefit from the insurance cover if the insurer accepted liability under the policy.

503. Mr Halls denied that the University had facilitated any improper use of its insurance arrangements, and he maintained that the involvement of the insurer followed the usual process required by the University's Financial Regulations and policy terms, and that the decision to provide cover was one taken independently by Zurich after reviewing the claim. Mr Halls denied that the availability of cover, nor the decision to notify the insurer, were influenced by any conduct on the part of the Claimant or by any alleged protected disclosure.

504. Nevertheless, Mr Halls also accepted in his evidence, both the University and Professor McMahon, were subject to a duty to act in the utmost good faith in connection with the terms of the policy including a duty of candour, and also to provide full and frank disclosure.

505. In this case Professor McMahon had never provided evidence in support of his grievance against the Claimant. As confirmed by Mr Halls, the University had a discretion, and if it suspected that Professor McMahon's grievance (which was the subject of the defamation claim), had been submitted in bad faith it could have declined to exercise its discretion to request cover, or it could have stopped it being provided once granted.

506. We were not provided with any evidence as to what discussions, if any, there were as to whether Professor McMahon's grievance was brought in bad faith. It appears that no thought was given to it at this stage despite the Claimant's repeated concerns being raised that the grievance had been vexatious and malicious. We record that these concerns had never been raised with Mr Halls, but they had certainly been raised with others, including HR. It was not put to Mr Halls in his oral evidence that his conduct had anything to do with the Claimant's protected disclosures.

Office location

507. The Director of the Institute has a specifically assigned office which must be vacated when their term in office ends and there will be a discussion where they will then be based. Whilst serving as Director Professor McMahon was based on a different floor to the Claimant and Dr Pebody. It had also been one of the outcomes of the Whiting Report that Professor McMahon and Dr Pebody should be separated. The Claimant had occupied his office for around twenty years at this time.

508. Professor McMahon's term in office ended in September 2022 and he selected an office which had easy access to both the Institute and the Kavil Institute of Cosmology. The decision where to locate was that of Professor McMahon. It was also three doors away from the Claimant's office. It was open to Professor McMahon to have selected an office in another building, however that would have been unusual as no Institute academic staff were located in other buildings.

509. On 13 June 2023, after Professor McMahon moved back to the corridor, we understand that the Claimant was not present due to his sabbatical, however Dr Pebody in her statement says that she heard Professor McMahon shouting down the telephone and speaking to his lawyers, and losing control at times, and referring to the subject matter of this claim and also the Whiting Report, as well as referring to the Claimant and to Dr Pebody. It was not made clear to us when this was brought to the attention of the Claimant, whether at the material time or much later.

510. In any event on 28 October 2023 the Claimant wrote to Professor Clarke and Professor Wyatt (as the new Co-Directors) and informed them that following discussions with his counsellor he did not consider that his work environment was safe as Professor McMahon had been moved into an office just two doors down from him. We should note that there is a small inconsistency that we are not able to resolve which is whether they were two or three doors apart – the precise number of rooms does not matter, the fact remains that they were located nearby.

511. We recall that Professor Clarke was also a Wellbeing Advocate and her evidence to us was that she had asked for training but none had been provided. Professor Clarke says that the Claimant did not raise this as an issue with her until 13 months after the move. Whereas we find that it is accurate, the reality is that the Claimant had been on a sabbatical from October to September 2023, and on sick leave. The location did not therefore concern him until such time as he was due to return to work. We did find the reference to the Claimant having waited to raise the issue to be an attempt by Professor Clarke to minimise the Claimant's concerns, and moreover it fitted in with a pattern we had observed of seeking to divert the blame to the Claimant for inaction on the part of the University.

512. There was a delay in discussing this with the Claimant as Professor Clarke and Professor Wyatt did not meet the Claimant until 22 December 2023, almost two months later. During that meeting Professor Clarke told the Claimant that the bar was high for rehousing someone within the Institute and that it had to be done equitably; the bar had not been met in his case; and further information would be needed from the Claimant.

513. On 7 January 2024 the Claimant wrote to Professor Clarke and Professor Wyatt to chase them up and he requested that Professor McMahon be relocated from his office which we note he had only inhabited for around a year since ending his directorship. This was on the basis that the Claimant said that he was unable to regularly use his office as Professor McMahon had moved there. The Claimant specifically alleged that one detriment he said he suffered as a consequence of whistleblowing was the failure to provide him with a safe space to work or to safeguard him from Professor McMahon.

514. There was then further delay of over a month in responding to the Claimant. Professor Clarke wrote to the Claimant on 13 February 2024 repeating what she had said in December 2023 and asking for more information. Professor Clarke stated:

> *"…the bar for forcibly rehousing somebody within the Institute is a high one and that nay such actions would of course need to be applied equitably. Our provisional view was that this bar had not been met but we encouraged you to supply further information in support of your case, which you did on 7 January."*

515. The Tribunal noted the use of the word "forcibly" which we found to be curious as Professor Clarke had not attempted to discuss the matter with Professor McMahon up to this point, however we were not provided with an explanation why.

516. The Claimant replied the same day to state that he has hardly been in his office due to the failure to supply him with a safe place of work.

517. The Claimant had referred himself to Occupational Health and the report dated 20 February 2024 recorded that whereas the Claimant was fit for work, he suffered from stress related symptoms and symptoms of depression; the stress related ill-health appeared to be work related; and there needed to be some workplace adjustments to support him and to address work stressors. The report said that the Claimant had described geographical factors in the department where staff are allocated workspaces which could be improved to reduce stress, and:

> *"…it would be helpful if room allocation could be reviewed to see if there could be more distance between these individuals to minimize contact when they are working in the building."*

518. Professor Clarke tells us that she formed the view that the advice was mildly expressed and as it was not expressed as a safeguarding issue Professor Clarke said she would take his views into consideration during the next review of occupation in the corridor, which we understand takes place annually in or around the summer. This suggested to us that there was a lack of concern on the part of the University about the Claimant's welfare given what he had been telling them which had been supported by independent Occupational Health advice. The Tribunal was surprised that such limited weight was placed on the contents of that Occupational Health advice from someone who had been Wellbeing Advocate.

519. The matter was then effectively put on hold until the summer although this was pursued by the Claimant on numerous occasions including 11 April 2024, 4 August 2024 and 14 September 2024.

520. At this time the Institute had around a 30% turnover of academic staff with many new joiners and staff retiring. Those academic staff who arrived would wish to bring their own research groups with them, and the corridor was sought after. We understand that the Claimant also had his own postdoctoral researchers located in offices adjacent to Professor McMahon.

521. Professor Clarke gave evidence that it would involve delicate negotiations and movements amongst academics, some of whom had accumulated thirty years of materials and they would unlikely be keen to move. Professor Clarke's evidence was that moving one person would impact others given their researchers would need access to them, and the corridor where the Claimant and Professor McMahon were based was highly sought after as it provided easier access to two different departments.

522. Professor McMahon was moved on 24 February 2025, some sixteen months since the Claimant first raised it as an issue, and a year following the Occupational Health advice. The Tribunal found this to be incredible period of delay.

523. Professor Clarke never asked Professor McMahon about moving voluntarily, and her evidence to us was that the reasons for moving Professor McMahon were due to accommodating new staff and the wellbeing concerns raised by the Claimant. Within Professor Clarke's witness statement, she also recorded that the decision to move was *"certainly not an expression of who we thought was at fault."*

Legal Submissions

524. The parties provided the Tribunal with comprehensive written closing submissions which they then supplemented with oral submissions. We have taken them fully into consideration in reaching our decisions. This is already a very long and detailed judgment and therefore we have not attempted to summarise those submissions. The Tribunal had earlier suggested that it may include them in this judgment, however as they are extensively referred to below, that would serve only to needlessly increase in length an already long judgment, therefore they are not reproduced in full.

Law

Protected disclosures / whistleblowing

525. The Employment Rights Act 1996 provides:

S. 43B(1) Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) …

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) …

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

…

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer, …

526. A qualifying disclosure therefore becomes a protected disclosure when it is made to the worker's employer or in accordance with the requirements made to external bodies or the press under s.43C-H.

527. In ***Williams v Michelle Brown AM*** **UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn out its reasoning and conclusions in relation to those which are in dispute." [9 and 10]

528. As to whether there has been a disclosure of information, in ***Cavendish Munro Professional Risks Management Ltd v Geduld*** **[2010] IRLR 38**, the EAT held that to be protected, a disclosure must involve giving information and must contain facts, and not simply voice a concern or raise an allegation:

"The ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information." [24]

529. Further clarification on what constitutes a disclosure of information was provided in ***Kilraine v London Borough of Wandsworth*** **[2018] ICR 1850** where the Court of Appeal held that:

"…the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below [2016] IRLR 422, para 30, set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. …

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision." [30 and 31].

…

"The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.

Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731 , para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such *that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."* [35 and 36].

…

"It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in the Cavendish Munro case [2010] ICR 325, para 24, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "You are not complying with health and safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the 1996 Act, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner" [41].

530. Accordingly it is entirely possible that an allegation may contain sufficient factual specificity to also amount to a disclosure of information – the focus must be on what information is being provided. Nevertheless a communication asking for information or making an inquiry is unlikely of itself to constitute conveying information, however it is important to view the full context of what is said in order to determine if there has been a disclosure of information.

531. It is possible for several communications together to cumulatively amount to a qualifying disclosure even where each communication is not a qualifying disclosure on its own - ***Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601.** Here the Court of Appeal agreed with the approach of the EAT in ***Norbrook Laboratories (GB) Ltd v Shaw* UKEAT/0150/13** where it was held that three emails taken together amounted to a qualifying disclosure even where the last email did not have the same recipients as the first two, as the former emails had been embedded in the final email. It will be a question of fact for the tribunal to decide whether two or more communications read together may be aggregated to constitute a qualifying disclosure on a cumulative basis. The court held:

"An earlier communication can be read together with a later one as "embedded" in it rendering the later communication a protected disclosure even if taken on their own they would not fall within section 43B(1)(d) (Goode paragraph 37). Accordingly two communications can, taken together, amount to a protected disclosure. Whether they do is a question of fact." [22]

532. These cases have reiterated the need to take into account the totality of a group of alleged disclosures in determining whether a qualifying

disclosure has been made rather than scrutinising each one separately without the consideration of the wider context.

533. As regards the Claimant's belief about the information disclosed, the question is whether the Claimant believed at the time of the alleged disclosure that the disclosed information tended to show one or more of the matters specified in section 43B(1). Beliefs the Claimant has come to hold after the alleged disclosure are irrelevant. Whether at the time of the alleged disclosure the Claimant held the belief that the information tended to show one or more of the matters specified in s.43B(1) and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs. It is important for a tribunal to identify which of the specified matters are relevant, as this will affect the reasonableness question.

534. Account should be taken of the worker's individual circumstances and the focus is on the worker making the disclosure and not on a hypothetical reasonable worker. Workers with a professional or inside knowledge may be held to a higher standard than lay persons in terms of what it is reasonable for them to believe.

535. Whereas the test for reasonable belief is a low threshold, it must still be based upon some evidence. Unfounded suspicions, rumours and uncorroborated allegations are insufficient to establish reasonable belief.

536. The belief must be as to what the information tends to show, which is a lower hurdle than having to believe that it does show one or more of the specified matters. There is no rule that there must be a reference in the disclosure to a specific legal obligation or a statement of the relevant obligations nor is there a requirement that an implied reference to legal obligations must be obvious. However, the fact that the disclosure itself does not need to contain an express or even an obvious implied reference to a legal obligation does not dilute the requirement that the Claimant must prove that he had in mind a legal obligation of sufficient specificity at the time he made the disclosure - ***Twist DX and others v Armes and others*** **UKEAT/0030/30/JOJ**.

"This is not to say that the questions whether the worker mentions, for example, criminality or illegality or health and safety in their disclosure, or whether it is obvious that they had these matters in mind, are irrelevant. What they said, and whether the matter is obvious, are relevant evidential considerations in deciding what they believed and the reasonableness of what they believed, rather than these questions presenting an additional legal hurdle, as Mr Nicholls effectively contends. If the nature of the worker's concern is stated - if they say that they consider that the reported information shows criminality or breach of legal obligation or a threat to health and safety - it will be harder to dispute that they held this belief and that the professed belief that the disclosure tended to show the specified matter was reasonable. The point is the same if what the worker thinks is obvious from what they say in the alleged disclosure. Conversely, if the link to the subject matters of any of section 43B(1)(a)-(f) is not stated or referred to, and is not obvious, an ET may see this as evidence pointing to the conclusion that the worker did not hold the beliefs which they claim, or that

the information is not specific enough to be capable of qualifying. But what cannot be said is that unless it is stated that the information tends to show one or more of the specified matters, or it is obvious that the concern falls within section 43B(1)(a)-(f) , the information is incapable of satisfying the requirements of that section because it cannot reasonably be thought by the worker that it tends to show any of the specified matters. In my view, with respect to Mr Nicholls, this is flawed reasoning." [87]

And

"In summary, then, none of the cases relied on by Mr Nicholls in relation to this issue involved the EAT overruling an ET which had found that there was a qualifying disclosure despite a failure by the worker to identify in the disclosure the fact that they had an actual or potential breach of legal obligation in mind, still less despite a failure to spell out the legal obligations in question. Evans , in the EAT, shows an ET decision being upheld despite a failure by the worker to do so, and the other decisions are all ones in which the EAT upheld the ET's finding of fact that the disclosure in question did not satisfy section 43B(1) and then made observations about why such finding was open to the ET on the evidence. The cases also show a range of formulations of when there need be no express reference to legal obligation – where it is obvious, common sense or sufficiently clear – but this tends to undermine the proposition that there is any rule other than that the worker's beliefs as to what the information tends to show must be reasonable." [103]

537. In ***Darnton v University of Surrey* [2003] IRLR 133** it was held by HHJ Serota that:

"In our opinion, it is essential to keep the words of the statute firmly in mind; a qualifying disclosure is defined, as we have noted on a number of occasions, as meaning any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show a relevant failure. It is not helpful if these simple words become encrusted with a great deal of authority…" [28] and

"We agree with the learned authors that, for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken." [32].

538. The issue of reasonable belief was considered by the EAT in ***Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4** where the following example was provided by way of illustration:

"To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a

breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing." [62]

539. When considering the question of the Claimant's reasonable belief, it must be remembered that motive is not the same as belief - ***Ibrahim v HCA International Limited*** **[2020] IRLR 224**. However, whilst a worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it.

540. Further in ***Jesudason v Alder Hey Children's NHS Foundation Trust*** **[2020] EWCA Civ 73** the court considered the time for assessing reasonableness of the belief, and it was held:

"The question of reasonableness must be assessed as at the time the complaint or concern is raised, not with hindsight after the complaint has been examined. If the appellant did reasonably believe that the facts on which he relied were substantially true, this might in principle have justified the disclosure…" [48]

Breach of a legal obligation

541. As regards legal obligation, in ***Boulding v Land Securities Trillium (Media Services)*** **Ltd [2006] UKEAT/0023/06** HHJ McMullen QC held the following:

"The legal principles appear to us to be as follow. The approach in ALM v Bladon is one to be followed in whistle-blowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see Lucas v Chichester UKEAT/0713/04). As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

"Likely" is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260, EAT Cox J and members:

"In this respect 'likely/ requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the Claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply."" [24 and 25].

542. In ***Eiger Securities LLP v Korshunova* [2017] ICR 561**, Slade J held:

"In order to fall within ERA s.43B(1)(b)… the ET should have identified the source of the legal obligations to which the claimant believed Mr Ashton or the respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation…

The decision of the ET as to the nature of the legal obligation the claimant believed to have been breached is a necessary precursor to the decision as to the reasonableness of the claimant's belief that a legal obligation has not been complied with" [46 and 47].

543. Whereas at the time a disclosure is made to an employer the employee need not necessarily state in terms what legal obligation is being or is likely to be breached, but at the time of the tribunal hearing this will be necessary in order for the Tribunal to test whatever at the time of disclosure the claimant had a reasonable belief that it tended to show a breach of that legal obligation - ***Arjomand-Sissan v East Sussex Healthcare NHS Trust UKEAT*/0122/17/BA**.

544. Accordingly, whilst the identification of the legal obligation does not need to be precise or detailed (nor in strict legal language - ***Fincham v HM Prison Service* EAT 0925/01** at paragraph 33), it has to be more than a belief that what was being done was wrong. Nevertheless, the legal obligation may be obvious when seen in context – ***Bolton School v Evans* [2006] IRLR 500, EAT** at paragraph 41.

545. In ***Babula v Waltham Forest College* [2007] ICR 1026** the court emphasised that a belief may be reasonable even if it is wrong provided that it was objectively reasonable for the worker to have believed that it tended to show that which is relied upon. The court held:

"75. However, I agree with the Employment Appeal Tribunal in Darnton's case [2003] ICR 615 that a belief may be reasonably held and yet be wrong. I am reminded, in a different context, of the well known speech of Lord Hailsham of St Marylebone LC in the adoption case of In re W (An Infant) [1971] AC 682 , 700 d when discussing whether or not a parent could be said to be unreasonable in withholding consent to adoption. He said: "Two

reasonable parents can perfectly reasonably come to opposite conclusions … without forfeiting their title to be regarded as reasonable." In my judgment, the position is the same if a whistleblower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided his belief (which is inevitably subjective) is held by the tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistleblower of the protection afforded by the statute."

Endangerment of health and safety

546. As regards endangerment of health and safety, the term "health and safety" is a generally well understood phrase and it will usually be clear whether the subject matter of a disclosure could fall within its scope.

547. A disclosure of this nature will require sufficient detail of the perceived risk to health and safety. In ***Fincham v HM Prison Service*** **EAT 0925/01** the worker was subjected to a campaign of racial harassment and informed the employer that "I feel under constant pressure and stress awaiting the next incident." The Employment Appeal Tribunal concluded that this was sufficient to amount to a qualifying disclosure:

"We found it impossible to see how a statement that says in terms "I am under pressure and stress" is anything other than a statement that her health and safety is being or at least is likely to be endangered. It seems to us, therefore, that it is not a matter which can take its gloss from the particular context in which the statement is made. It may well be that it was relatively minor matter drawn to the attention of the employers in the course of a much more significant letter. We know not. But nonetheless it does seem to us that this was a disclosure tending to show that her own health and safety was likely to endangered..." [30]

Public interest

548. As regards the public interest, there is no statutory definition of this concept and it is not for the tribunal to determine what is or what is not in the public interest. Our task is different and it is the Claimant's reasonable belief that is in issue.

549. The issue of the public interest was considered by the Court of Appeal in ***Chesterton Global Ltd v Nurmohamed*** **[2017] EWCA Civ 979**. In that case the court made reference to the amendment to S. 43B by the Enterprise and Regulatory Reform Act 2013 which introduced the requirement for the worker to have a reasonable belief that the disclosure was in the public interest. The Court of Appeal in ***Chesterton*** urged tribunals to be cautious when deciding whether a worker reasonably believed that a disclosure was in the public interest. The Tribunal must be careful not to substitute its own view of whether the disclosure was in the public interest.

550. The court reiterated that the necessary belief is simply that the worker believes that the disclosure is in the public interest however the reasons why he believes it to be so are not of the essence, and further a disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to matters which were not in his head at the time he made it. Nevertheless, if the worker cannot give credible reasons why he thought the disclosure was in the public interest at the time, that may cast some doubt and whether he thought so at all. The court held that all that matters is that the worker's subjective belief was objectively reasonable.

551. Moreover, the public interest does not have to be the worker's predominant motive in making the disclosure. The court reiterated that the essential distinction is between disclosures which serve the private or personal interest the worker making the disclosure and those that serve a wider interest. The Court recorded the following:

"26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B(1) .

27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula's case [2007] ICR 1026 (see para 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to the " Wednesbury approach" (Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223) employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the tribunal should be careful not to substitute its own view of whether the ****742*** *disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking—that is indeed often difficult to avoid—but only that that view is not as such determinative.*

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the *significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable [6] .*

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para 17 above, the new sections 49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation—the phrase " in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

…

37. Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character [7]), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

552. One of the questions considered by the court in ***Chesterton*** is whether a disclosure becomes in the public interest simply because it serves the private interests of other workers as well. The court suggested that there should be consideration of the following four factors:

"(a) the numbers in the group whose interests the disclosure served—see above;

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed—a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed—disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer—as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i e staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest"—though he goes on to say that this should not be taken too far." [34]

553. Underhill LJ held *"It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by It rather than simply on the numbers of people sharing that interest… Such an interest does not change its character simply because it is shared by another person."* [35]

554. Within ***Chesterton*** the example was given of a disclosure about doctors being required to work excessive hours which might well be in the public interest as well as in the personal interest of the doctors themselves because of the risk to patients due to the nature of the disclosure rather than the numbers of doctors affected. Accordingly, we note that it is that wider public interest which is the distinguishing feature.

555. The following helpful principles can be taken from the judgment in ***Chesterton***:

i. There is a subjective element - the Tribunal must ask, did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest?

ii. There is then an objective element - was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.

iii. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence.

iv. The reference to public interest involves a distinction between disclosures which serve only the private or personal interest of the worker making the disclosure, and those that serve a wider interest.

v. It is still possible that the disclosure of a breach of the Claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest. In such a case it will be necessary to consider the nature of the wrongdoing and the interests affected, and also the identity of the alleged wrongdoer. These are also referred to as the four factors in ***Chesterton***.

556. To summarise, when addressing the public interest part of the test, the questions for the Tribunal are:

i. whether the worker considered the disclosure to be in the public interest;

ii. whether the worker believed the disclosure served that interest; and

iii. whether that belief was reasonably held.

557. In ***Dobbie v Felton (t/a Feltons Solicitors)*** **UKEAT/0130/20/00** HHJ Tayler also provided guidance on considerations relevant to how a tribunal should approach the issue of the public interest:

"28. There are a few general observations I consider it worth adding:

(1) a matter that is of "public interest" is not necessarily the same as one that interests the public. As members of the public we are interested in many things, such as music or sport; information about which often raises no issue of public interest

(2) while "the public" will generally be interested in disclosures that are made in the "public interest", that does not necessarily follow. There may be subjects that most people would rather not know about, that are, nonetheless, matters of public interest

(3) a disclosure could be made in the public interest although the public will never know that the disclosure was made. Most disclosures are made initially to the employer, as the statute encourages. Hopefully, they will be acted on. So, for example, were a nurse to disclose a failure in the proper administration of drugs to a patient, and that disclosure is immediately acted on, with the consequence that he does not feel the need to take the matter any further, that would not prevent the disclosure from having been made in the public interest – the proper care of patients is a matter of obvious public interest

(4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition. If the nurse in the example above disclosed a one off error in administration of a drug to a specific patient, the fact that the mistake was unlikely to recur would not necessarily stop the disclosure being made in the public interest because proper patient care will generally be a matter of public interest

(5) while it is correct that as Underhill LJ held there is "not much value in trying to provide any general gloss on the phrase "in the public interest" – noting that "Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression" – that does not mean that it is not to be determined by a principled analysis. This requires consideration of what it is about the particular information disclosed that does, or does not, make the disclosing of it, in the reasonable belief of the worker so doing, "in the public interest". The factors suggested by Mr Laddie in Chesterton may often be of assistance. While it certainly will not be an error of law not to refer to those factors specifically, where they have been referred to it will be easier to ascertain how the analysis was conducted. It will always be important that written reasons set out what factors were of importance in the analysis; which may include factors that were not suggested by Mr Laddie in Chesterton . As Underhill LJ held "The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case". It follows that if no account is taken of factors that are relevant; or relevant factors are ignored, there may be an error of law

(6) for the disclosure to be a qualifying disclosure it must in the reasonable belief of the employee making the disclosure tend to show one or more of the types of "wrongdoing" set out in section 43B (a)-(f) ERA . Parliament must have considered that disclosures about these types of "wrongdoing" will often be about matters of public interest. The importance of understanding the legislative history of the introduction of the requirement for the worker to hold a reasonable belief that the disclosure is "made in the public interest" is that it explains that the purpose was to exclude only those disclosures about "wrong doing" in circumstance such as where the making of the disclosure serves "the private or personal interest of the worker making the disclosure" as opposed to those that "serve a wider interest"

(7) while the specific legislative intent was to exclude disclosures made that serve the private or personal interest of the <u>worker making the disclosure,</u> that is not the only possible example of disclosures that do not serve a wider interest, and so are not "made in the public interest". There might be a disclosure about a matter that is only of private or personal interest to the person <u>to whom</u> the disclosure is made and does not raise anything of "public interest".

(8) while motivation is not the issue; so that a disclosure that is made with no wish to serve the public can still be a qualifying disclosure; the person making the disclosure must hold the reasonable belief that the disclosure is "made" in the public interest. If the aim of making the disclosure is to damage the public interest, it is hard to see how it could be protected. Were a worker to disclose information to his employer, that demonstrates that it is discharging waste that is damaging the environment, with the aim of assisting in a coverup, or to recommend ways in which more waste could be discharged without being found out; while the disclosure would otherwise be a qualifying disclosure, it is hard to see how the disclosure could be "made" in the public interest. The fact that a disclosure can be made in "bad faith" does not alter this analysis. A worker might make public the fact that the employer is discharging waste because he dislikes the MD, and so is acting in bad faith, but nonetheless hold the reasonable belief that making the disclosure is in the public interest because the discharge of waste is likely to be halted. Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest."

Detriment

558. The Employment Rights Act 1996 provides:

S. 47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

559. Detriment has the same meaning as in discrimination law, meaning that someone is put to a disadvantage – ***Ministry of Defence v Jeremiah* [1980] ICR 13 CA**.

560. Further assistance as to the meaning of detriment can be found in the discrimination context from the case of ***Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285,** where the court held:

"34. … The word "detriment" draws this limitation on its broad and ordinary meaning from its context and from the other words with which it is associated. Res noscitur a sociis. As May LJ put it in De Souza v Automobile Association [1986] ICR 514 , 522G, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

35.. But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Lord Brightman. As he put it in Ministry of Defence v Jeremiah [1980] QB 87 , 104B, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in *all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur and others (No 2) [1995] IRLR 87 . But, contrary to the view that was expressed in Lord Chancellor v Coker and Osamor [2001] IRLR 116 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence."*

561. More recently in ***Jesudason*** further clarification of the term "detriment" was provided by Elias LJ who held:

"In order to bring a claim under section 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases…" [27]

And

"Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective." [28].

Causation

562. As per Linden J in ***Twist DX***:

"..the five requirements of section 43B(1) are evidentially exacting for the claimant, who has the burden of proof in relation to this issue. ETs, in my view, can be relied upon to use their common sense and awareness of the aims of the legislation to separate the genuine public interest disclosure cases from claims which are constructed. Moreover, even where the worker has made a qualifying disclosure which is protected, they will not succeed unless the ET concludes that the disclosure of the qualifying information was a, or the, reason for the treatment complained of…" [105].

563. In ***Manchester NHS Trust v Fecitt*** **[2011] EWCA 1190; [2012] ICR 372** the Court of Appeal held that:

"In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower." [45].

564. The critical question for the tribunal is therefore this – if a claimant has made a protected disclosure, and if they have suffered a detriment, was that disclosure of no influence or only a trivial influence when it came to how the claimant was treated (in which case the tribunal should dismiss the complaint), or did it influence the employer in some material way (in which case the tribunal should uphold the complaint)?

565. It must be also be remembered that the test for causation is different for detriment claims than the test for automatic unfair dismissal under s. 103A

of the Act where a tribunal is looking to determine whether the disclosure was the reason or a principal reason for dismissal. Here in this claim the tribunal need only find that it was a material (that is a more than trivial) influence on the treatment.

566. When examining causation the tribunal must not apply a "but for" test rather it must focus on the reason why someone acted as they did. This is clear from ***Jesudason*** where it was held:

"Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B." [31].

567. This is also clear from ***Harrow LBC v Knight*** **[2003] IRLR 140** where the court held that tribunal must assess the conscious and unconscious motivation of the people involved:

"It is thus necessary in a claim under s. 47B to show that the fact that the protected disclosure had been made caused or influenced the employer to act (or not act) in the way complained of: merely to show that "but for" the disclosure the act or omission would not have occurred is not enough (see Khan). In our view, the phrase "related to" imports a different and much looser test than that required by the statute: it merely connotes some connection (not even necessarily causative) between the act done and the disclosure." [16]

568. Further the court held that a detriment can be on the ground that the employee has made a protected disclosure whether the motivation is conscious or subconscious [17].

569. As regards motivation, it was further held in ***Croydon Health Services NHS Trust v Beatt*** **[2017] ICR 1240** that the motivation of the employer does not have to be malicious in order to amount to a detriment. In that case a factually accurate press release was found to have amounted to a detriment in those specific circumstances.

570. In ***First Greater Western Ltd v Moussa*** **[2024] IRLR 697** the tribunal at first instance had upheld the complaint of detriment, not because of a conspiracy amongst the protagonists, but due to a myriad of examples of unfairness and less favourable treatment which could not be simply explained by a string of unfortunate errors – rather the tribunal found that they were due to the existence of an underlying negative attitude towards the claimant shared and understood by management [41]. Specifically the tribunal at first instance had found that there was a collective memory within the first respondent prejudicial to that claimant which permeated the approach of HR and those advised by HR; there was a general negative view of the claimant within management lore which the tribunal found was connected with the history of the claimant's employment of the Respondent [72].

571. The tribunal also found that the claimant had been subjected to detriments on the grounds that of the protected disclosures (and protected acts); however it did not suggest that there was a conspiracy amongst the protagonists but rather it found that the myriad examples of unfairness and less favourable treatment could not simply be explained by a string of unfortunate errors; rather the tribunal found that they showed the existence of an underlying negative attitude towards the claimant shared and understood by management including a specific HR representative.

572. Upon appeal the Employment Appeal Tribunal upheld that approach:

"119. The tribunal's analysis was sophisticated and nuanced: the 2012 and 2013 protected disclosures and acts caused the 2018 detriments through the medium of the ill-will that FGW management, institutionally, bore the claimant. That was, the tribunal decided, a causative link leading to the conclusion that FGW's management in a collective sense, qua body corporate and employer, inflicted the detriments "on the ground" of the protected disclosures and "because" of the protected acts; even though the two individual managers did not.

120. The "collective memory" prejudicial to the claimant (the tribunal's phrase in paragraph 72) was personified and perpetuated by Mr Czechowicz, who demonised the claimant and encouraged Mr White to treat him unfairly. There was no other explanation for the extraordinary way he was treated by comparison with Mr Larkin; nor for the message from Natalie the co-worker; nor for his suspension despite the incident not being viewed as gross misconduct; nor for Ms Czechowicz's disparagement of him and his representative Mr Singh (see paragraphs 74.1-8 and 75-77).

…

122. Turning to the cases, many factual scenarios, real and hypothetical, are discussed in them. The present case is not a collusion case, nor a joint decision maker case, nor a chain of command case, nor is it quite as bad as an "Iago" case. I do not find these labels helpful because every case is different. If a label for this case is needed, it is a combination of a manipulation case – MsCzechowicz manipulating Mr White – an organisational culture case – the culture of hostility to the claimant because of the protected disclosures and acts – and with some tainted information from MsCzechowicz about the propriety of suspension in a non-gross misconduct case."

Manner of disclosure and separability

573. An employer will not be liable for the alleged detriment if it can show that the reason for the treatment was not the protected act as such but rather than one or more factures and/or consequences of it which were properly and genuinely separable from it – ***Martin v Devonshires Solicitors*** **[2011] ICR 352** – whereas this was in the context of victimisation the same principles carry across for whistleblowing:

> *"In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a*

complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the manner of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 a m. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say "I am taking action against you not because you have complained of discrimination but because of the way in which you did it". [22]

And further:

"But it seems to us that the underlying principle is the same: the reason asserted and found constitutes a series of features and/or consequences of the complaint which were properly and genuinely separable from the making of the complaint itself. Again, no doubt in some circumstances such a line of argument may be abused; but employment tribunals can be trusted to distinguish between features which should and should not be treated as properly separable from the making of the complaint." [23]

574. In ***Bolton School v Evans* [2007] ICR 641** the Court of Appeal drew a distinction between the employee's disclosure that the employer's system was not secure, and the employee's irresponsible conduct in hacking into the employer's system to demonstrate the vulnerability. In that case the reason for issuing a warning to the employee was held to be for the misconduct in accessing the system, which was properly separable from what was being disclosed by employee.

575. Again and more recently in ***Panayiotou v Kernaghan* [2014] IRLR 500** it was held:

"First, as a matter of statutory construction, section 47B of ERA does not prohibit the drawing of a distinction between the making of protected disclosures and the manner or way in which an employee goes about the process of dealing with protected disclosures. A protected disclosure is "any disclosure of information" which in the reasonable belief of the employee tends to show the existence of one of the state of affairs specified in section 43B(1) of ERA, e.g. that a criminal offence has been or is being committed or that a person is failing or is likely to fail to comply with a legal obligation or that a miscarriage of justice has occurred, is occurring or is likely to occur. There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. <u>Depending on the circumstances, it</u>

<u>may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable</u>. Similarly, it is also possible, depending on the circumstances for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed." [49]

576. More recently still the court in ***Kong v Gulf International Bank (UK) Ltd (Protect (the Whistleblowing Charity) intervening)*** **[2022] IRLR 854**, the court held:

> *"56. I would endorse and gratefully adopt the passages I have cited as correct statements of law. They recognise that there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. In such cases, as Underhill LJ observed in Page [2021] ICR 912 , the protected disclosure is the context for the impugned treatment, but it is not the reason itself.*
>
> *57. Thus the "separability principle" is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistleblowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.*
>
> *58. Likewise, what was said in Martin [2011] ICR 352 , about being slow to allow purported distinctions between a protected*

complaint and ordinary unreasonable behaviour, is also not a rule of law. There is no objective standard against which behaviour must be assessed to determine whether the separability principle applies in a particular case, nor any question of requiring behaviour to reach a particular threshold of seriousness before that behaviour or conduct can be distinguished as separable from the making of the protected disclosure itself. The phrases used in the authorities (in the context of trade union activities, victimisation and whistleblowing) capture the flavour of the distinction, but were not intended to be treated as defining, and do not define, those cases where separability would or would not apply. They cannot properly be read in this way. In the wide spectrum of human conduct that might be relied on by decision-makers, each end of the spectrum is easy to identify as Phillips J observed in Lyon [1976] ICR 413, 419 : gross misconduct or conduct that is "wholly unreasonable, extraneous or malicious" at one end; and wholly innocent, blameless conduct at the other. Between those two ends of the spectrum difficult questions of fact arise, and the conduct and circumstances of the particular case will require close consideration. But the authorities provide no factual precedent or objective standard against which to assess the conduct relied on in a particular case.

59. The statutory question to be determined in these cases is what motivated a particular decision-maker; in other words, what reason did he or she have for dismissing or treating the complainant in an adverse way. This factual question is easy to state; but it can be and frequently is difficult to decide because human motivation can be complex, difficult to discern and subtle distinctions might have to be considered. In a proper case, even where the conduct of the whistleblower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant's conduct that is distinct from the protected disclosure and is the real reason for impugned treatment.

60. All that said, if a whistleblower's conduct is blameless, or does not go beyond ordinary unreasonableness, it is less likely that it will be found to be the real reason for an employer's detrimental treatment of the whistleblower. The detrimental treatment of an innocent whistleblower will be a powerful basis for particularly close scrutiny of an argument that the real reason for adverse treatment was not the protected disclosure. It will "cry out" for an explanation from the employer, as Elias LJ observed in Fecitt , and tribunals will need to examine such explanations with particular care.

61. The legislation confers a high level of protection on whistleblowers for sound reasons, and the distinction should not be allowed to undermine that important protection or deprive individuals of protection merely because their behaviour is challenging, unwelcome or resisted by colleagues. As Mr Laddie emphasised, whistleblowing by its nature, frequently involves an individual raising concerns about wrongdoing committed by *individuals, frequently colleagues, commonly working in the same workplace. It is a natural human response to be defensive and resist criticism. Not only is it likely that the subject or content of a protected disclosure will be unwelcome, the manner in which it is made, repeated or explained, may also be unwelcome, leaving individuals feeling it necessary to restate their concerns, and increasing the prospect of being perceived as an irritant or thorn in the employer's side. Some things are necessarily inherent in the making of a protected disclosure and are unlikely to be properly viewed as distinct from it. The upset that a protected disclosure causes is one example because for all practical purposes it is a necessary part of blowing the whistle; inherent criticism is another. There are likely to be few cases where employers will be able to rely on upset or inherent criticism caused by whistleblowing as a separate and distinct reason for treatment from the protected disclosure itself, though I am reluctant to say that it could never occur. The way in which the protected disclosure is made is also, in general, part of the disclosure itself, unless there is a particular feature of the way it is made (for example, accompanying racist abuse) that makes it genuinely separable."*

Burden of proof

577. Section 48(2) Employment Rights Act 1996 provides that it is for the employer to show the ground on which any act, or deliberate failure to act was done.

578. In ***International Petroleum Ltd and others v Osipov and others*** **UKEAT/0058/17/DA** it was held that the claimant must establish facts from which the tribunal can conclude that the protected disclosure had a material influence on the treatment complained of. Following on, and by virtue of s. 48(2), the employer must be prepared to show why the detrimental treatment was done. If it does not do so, inferences may be drawn against the employer; however, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.

579. Where an employer fails to show the ground on which a claimant was subjected to detriment it does not follow that the claimant's claim must succeed – ***Ibekwe v Sussex Partnership NHS Foundation Trust*** **UKEAT/0072/14**. Here HHJ Peter Clark held that he did not accept that a failure by a respondent to provide an explanation meant that the claim should succeed by default (distinguishing the position under the ordinary discrimination legislation).

580. Additional guidance was provided by the EAT in ***Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust*** **UKEAT/0047/19/BA** which held:

"…Firstly, it will not necessarily follow, from findings that a complainant has made a protected disclosure, and that they have been subjected to a detriment, alone, that these must by themselves lead to a shifting of the burden under Section 48(2) .

The Tribunal needs to be satisfied that there is a sufficient prima facie case, such that the conduct calls for an explanation.

Secondly, if the burden does shift in that way, it will fall to the employer to advance an explanation, but, if the Tribunal is not persuaded of its particular explanation, that does not mean that it must necessarily or automatically lose. If the Tribunal is not persuaded of the employer's explanation, that may lead the Tribunal to draw an inference against it, that the conduct was on the ground of the protected disclosure. But in a given case the Tribunal may still feel able to draw inferences, from all of the facts found, that there was an innocent explanation for the conduct (though not the one advanced by the employer), and that the protected disclosure was not a material influence on the conduct in the requisite sense." [33 and 34]

581. In ***Kuzel v Roche Products Ltd* [2008] ICR 799 CA**, the court held that where an employer fails to satisfy the Tribunal for the reason for the treatment (in that case, the dismissal), it is open to the Tribunal to find that the reason was as asserted by the employee, however it is not obliged to do so and it may conclude after considering all of the evidence that the true reason for the treatment was for something not advanced by either side [60]. Accordingly, where an employer leads no evidence, or where the employer's explanation is rejected, this does not automatically lead to the claim being made out, rather the Tribunal may in an appropriate case, draw an inference from the failure to establish the grounds for the treatment.

Time

582. Section 48 Employment Rights Act 1996 provides:

Complaints to employment tribunals

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

…

(1) On a complaint under subsection (1), 1XA), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

…

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

…

583. In ***Tait v Redcar and Cleveland Borough Council*** **UKEAT/0896/08** which was a whistleblowing claim where the complaint related to a disciplinary suspension (alleged to amount to a discriminatory detriment short of dismissal) the EAT held:

> *"…it seems to us that a disciplinary suspension is clearly "an act extending over a period" within the meaning of the statute. Although there is no doubt an initial "act" of suspension, the state of affairs thereafter in which the employee remains suspended pending the outcome of the disciplinary proceedings can quite naturally be described not simply as a consequence of that act but as a continuation of it."* [8]

584. In ***Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT*****/0342/16** the EAT held:

> *"42. By taking the decision to instigate disciplinary procedures, it seems to me that the Respondent created a state of affairs that would continue until the conclusion of the disciplinary process. This is not merely a one-off act with continuing consequences. That much is evident from the fact that once the process is initiated, the Respondent would subject the Claimant to further steps under it from time to time. Alternatively, it may be said that each of the steps taken in accordance with the procedures is such that it cannot be said that those steps comprise "a succession of unconnected or isolated specific acts" as per the decision in Hendricks, paragraph 52.*
>
> *43. In my judgment, the Tribunal erred in treating the first stage of the process as a one-off act. Mr Kibling submits that this is a clear finding of fact and notes that the decision is not challenged on the basis of perversity. However, the Tribunal here, for reasons already set out, lost sight of the substance of the complaint as defined by the agreed issue. Having done so, it then incorrectly treated the subdivided issue as a one-off, when it undoubtedly formed part of an ongoing state of affairs created by the initial decision.*
>
> *44. That outcome avoids a multiplicity of claims. If an employee is not permitted to rely upon an ongoing state of affairs in situations such as this, then time would begin to run as soon as each step is taken under the procedure. Disciplinary procedures in some employment contexts - including the medical profession -*

can take many months, if not years, to complete. In such contexts, in order to avoid losing the right to claim in respect of an act of discrimination at an earlier stage, the employee would have to lodge a claim after each stage unless he could be confident that time would be extended on just and equitable grounds. It seems to me that that would impose an unnecessary burden on claimants when they could rely upon the act extending over a period provision. It seems to me that that provision can encompass situations such as the one in question."

Conclusion and decision

Protected Disclosures

585. We will first examine whether Professor Evans made a protected disclosure. We remind ourselves that in order for a disclosure to qualify for protection under Part IVA of the Employment Rights Act 1996, the Claimant must have disclosed information; he must have held a subjective belief that the information tended to show one of the relevant failures identified in s.43B of the Act; that belief must have been objectively reasonable; the Claimant must have subjectively believed that the disclosure was made in the public interest; that belief must also have been objectively reasonable; and the disclosure must have been made to the employer (the other categories of persons to whom disclosures may be made are not relied upon this case).

586. We also bear in mind that the statutory question is not whether the Claimant was correct about such matters, rather the question for this Tribunal is whether he reasonably believed that the information tended to show a relevant failure. A worker can be mistaken and still be protected.

587. Further, we accept Mr Brittenden KC's submission that a disclosure concerning a single individual can nevertheless satisfy the public interest requirement. The focus is upon the worker's reasonable belief. Here the disclosures concerned the welfare of a University employee, the actions of a senior academic leader, the handling of public grant funding, and obligations entered into by an education institution.

Issue 1.1 - Email to Professor Peake dated 20 July 2021

588. Within the email of 20 July 2021, the Claimant referenced that a duty of care was owed to Dr Pebody by her employer; he expressed he was very concerned for her as she was in a fragile state of mind, and that she believed that Professor McMahon was trying to make her unemployed. The Claimant said Dr Pebody had good reason for that belief as there was overwhelming evidence that Professor McMahon was seeking to make her unemployed as part of a personal vendetta. The Claimant referenced what he said was the Institute's terrible record of support for female staff, and he named four other female administrative members of staff whom he said had been poorly treated, including Employee A who had taken her own life. The Claimant expressly stated that there was bad history of misogyny of female administrators at the top of the Institute of Astronomy, and he was terrified of history repeating itself.

589. Whereas much of the email contained generalised allegations, we find that the email nevertheless contained sufficient factual specificity to amount to a disclosure of information. Put simply the Claimant was saying that Professor McMahon was seeking to force Dr Pebody out of her role due to a vendetta; and there was a culture of misogyny within the Institute towards female administrators; and as a result he was concerned about the impact upon Dr Pebody's mental health.

590. Given that much of the email was general in nature we recongise the force of the Respondents' argument that this comprised vague assertions which it says barely rise to the level of allegations. However, we find that the reference to the personal vendetta, and the details provided about the alleged culture of misogyny, add some specificity to the disclosure.

591. Had the Claimant simply said that Professor McMahon was trying to push Dr Pebody out of her role then we may have agreed that was too vague to have amounted to a disclosure of information, however here the Claimant was saying that Professor McMahon had a personal vendetta to do so, and moreover this was negatively impacting Dr Pebody's mental health, in the wider context that something similar had happened to four other women. Whilst we accept that this was limited detail, it was in our view, nevertheless still sufficient to constitute a disclosure of information.

592. Having satisfied ourselves that there was a disclosure of information, we will go on to consider the issue of whether the Claimant reasonably believed that this tended to show one of the failings under s. 43B of the Act. We remind ourselves that tending to show is not the same as actually does show one of those matters, and secondly there is both (i) a subjective element – did the Claimant believe that it tended to show one of those matters, and also (ii) an objective element – was it reasonable for him to have believed that it tended to show that.

593. The Respondents have argued very strongly that the Claimant did not even believe subjectively that the disclosure tended to show those things, and they attack his motivation on the basis he was not concerned about Dr Pebody at all as he delayed acting, and rather he was seeking to damage Professor McMahon. The Respondents say that the factual premise behind the disclosure, essentially the allegation about misogyny, was dishonest. That is a very strong allegation to make.

594. With respect to the alleged culture of misogyny, as we have already expressed in this judgment, it is not for us to determine if there was or was not such a culture within the Institute, and it is entirely possible for a man to reasonably consider that there was and for a woman to reasonably consider that there was not. Had the Claimant simply referred to generalised concerns about Dr Pebody's treatment then it is likely there would be greater force in the Respondents' arguments, however the Claimant named four members of staff whom he said had been treated poorly and he gave a very brief description of their alleged treatment which the Respondents have not challenged to any significant degree – save that Professor Clarke gave compelling evidence of her own view that the Claimant's portrayal of misogyny within the Institute was not her experience.

595. We shall never know what drove Employee A to take her own life,

and we have heard very little about the other three named female colleagues, nevertheless given the numbers allegedly affected and the brief description about their alleged treatment (which has not been tested in evidence), we are satisfied that the Claimant genuinely believed that there was a problem within the Institute about the way female administrators were being treated. We reject the argument that the Claimant was dishonest about it – it is entirely possible that the Claimant is wrong about a culture of misogyny, or he could be right, however in our judgement we find that the Claimant genuinely believed that culture to exist and he was concerned that Dr Pebody was suffering what he believed to be the same or similar treatment as some of the other four female staff he had named.

596. We also noted the Respondents' argument that the Claimant did not believe that Dr Pebody's health and safety was at risk as he did not seek emergency pastoral care for Dr Pebody and instead went to his boss' boss; he delayed raising his concerns; and that he later told the University that pastoral support was not required for Dr Pebody. The Respondents also said that the Claimant feigned emotion during the Tribunal hearing about the matter and that he had weaponised the death of Employee A for his own ends. This again was an incredibly strong attack on the Claimant.

597. On the issue of feigning emotion, we noted that the Claimant had been accused during the hearing of shedding crocodile tears. It was a serious allegation, and it is an allegation that the Respondents were entitled to put to the Claimant, however we were not persuaded that the Claimant's expressed emotion in the hearing was false or dramatised for our benefit.

598. People express emotion in different ways, and this has been a long running and hard-fought case played out years later in an Employment Tribunal hearing. All of those who attended and gave evidence before us would have been under a great deal of pressure, and we are not in a position to gauge their normal emotional responses.

599. Having viewed the Claimant's responses to oral questions about Dr Pebody's health and safety, we did not form an adverse view about the Claimant's credibility in that regard, nor did we find any substance to the serious allegation of him weaponising the death of his colleague for his own ends. Nor did we identify any underlying intent to mislead nor any predisposition towards manipulation on the part of the Claimant which were the crux of the very serious allegations which have been repeatedly made against him in these proceedings. The Claimant has been consistent and credible in his answers to questions and we believed him. Moreover, the Claimant's account has not changed since the time of the facts giving rise to this claim – the Claimant has been saying the same things repeatedly and consistently.

600. We are also mindful of the guidance provided by HHJ Tayler in ***Mayanja v City of Bradford Metropolitan District Council*** **[2025] EAT 160** [at 38] to the effect that a tribunal should be mindful of the risk of making an overarching assessment of credibility that is then relied upon in all further assessments. We have not made any overarching assessment about anyone's credibility in this case.

601. As regards the Claimant delaying raising his concerns and then

going to his boss' boss, we reject that argument. Whereas Professor McMahon had made the zeroing out comments on 7 June 2021, as we have identified within this judgment, it was the weekend of 17/18 July 2021 where matters came to a head as the Claimant says Dr Pebody became more distressed and was emailing him repeatedly. That explains why the Claimant sent his email when he did on 20 July 2021.

602. Contrary to the Respondents' argument, the Claimant did not go straight to his boss' boss (Professor Peake), the Claimant went first to Professor Clarke as the Wellbeing Advocate, and it was Professor Clarke who then directed him to Professor Peake. This was suggestive to us of a genuine concern.

603. We are also not satisfied that the Claimant ever rejected or opposed the University reaching out to Dr Pebody, rather he was expressing concern about who contacted her, and he was indicating that she was getting support from those whom she trusted. We did not infer that the health and safety concerns were not genuine because of this.

604. We note that the Claimant's email was sent before he became aware of the invitation to consultation letter sent to Dr Pebody, however we disagree that the only information the Claimant had was the zeroing out comment from Professor McMahon on 7 June 2021. As has been made clear in the hearing, Dr Pebody was in routine contact with the Claimant throughout this time and she was telling him about her concerns about her alleged treatment by Professor McMahon. The Claimant knew a lot more than simply the zeroing out comments, which we find were particularly serious in any event given that zeroing out the ORP would likely have zeroed out 90% of Dr Pebody's work – moreover Professor McMahon made a number of hostile comments about Dr Pebody during that conversation.

605. Whereas the Respondents argue bad faith on the part of the Claimant as he misquoted those zeroing out comments to Professor Peake later on 26 July 2021, as we have recorded in this judgment, zeroing out the ORP would have effectively zeroed out Dr Pebody's work, and this is what the Claimant took that comment to mean even if he misremembered it as he did not have the transcript and had not listened to the recording. In any event those comments were made to Professor Peake later on and when he told him that he had made a recording. Had the Claimant deliberately lied about the zeroing out comments then it would have been unwise to reveal the existence of a recording which could have undermined what he had just said.

606. We further noted the Respondents' argument that the Claimant did not suspect that Professor McMahon was seeking to make Dr Pebody unemployed, however when one reads the full transcript of what he said about Dr Pebody on 7 June 2021 it contains numerous serious criticisms about her. The potential for Dr Pebody's role to come to an end is evident from the suggestion that the project she is working on would be zeroed out if Professor McMahon got his way.

607. The 7 June 2021 discussion was far removed from simply whether to continue with the ORP or not – rather Professor McMahon's comments about Dr Pebody were incredibly hostile about her as he undermined her

contribution and quality of her work; he said that there was no Institute role for her; he said that she should be looking for other roles; and he went on to accuse her of being a bully, and he talked about a potential disciplinary against her. These were incredibly serious criticisms of Dr Pebody by Professor McMahon as Director of the Institute.

608. Moreover, the Claimant knew that it was only the week before that Professor McMahon had sought to amend the examiners' minutes to remove praise for her work. We find that a reasonable person, having been part of that exchange, and having noted what happened with the proposed changes to the examiners' minutes, having listened to Dr Pebody's repeated concerns, and having seen the delays in signing the X5 form, might also quite reasonably have queried whether Professor McMahon was seeking to have Dr Pebody removed from her role.

609. Although the Respondents have alleged that the Claimant's disclosure was one of untruths and half-truths, manipulated to achieve a particular end (presumably to damage Professor McMahon) we reject that argument. The Respondents had argued in the hearing that the Claimant was seeking revenge, but we were never told what it was that he was said to be avenging. We are not persuaded that the Claimant was in fact avenging anything.

610. Whereas the Claimant has vigorously pursued complaints about the way he says that he and Dr Pebody have been treated, that is not synonymous with seeking vengeance. In many instances in this case the Claimant was clearly persisting with some of his complaints because of inaction and poor action on the part of the University and the Institute, things were taking so long to resolve, he did not know what he was being accused of, he was not getting answers to some of his questions, and some of the things he was being told by the University were quite plainly incorrect.

611. In addition, even if the Claimant was also seeking to settle unidentified old scores (which we do not accept), it is also clear that a worker may have more than one motivation when it comes to making a protected disclosure. The issue of motivation may also be relevant when it comes to the issue of remedy in some cases, however the specific requirement for a disclosure to be made in good faith has long since been abandoned by Parliament in 2013 when considering whether a disclosure has been made in the first place. To the extent that it is relevant to the issue of reasonable belief, we do not find that the Claimant acted in bad faith when he sent his email of 20 July 2021.

612. We are satisfied that the Claimant subjectively believed that the information he disclosed tended to show a risk to the health and safety of Dr Pebody, and further that it was objectively reasonable for him to have done so. The Claimant had witnessed first-hand Dr Pebody's distressed and deteriorating mental health; Dr Pebody confirms in her unchallenged evidence that she had made him aware of the same; and furthermore both Professor Haehnelt and Professor Belokurov confirm in their unchallenged witness statements that they observed Dr Pebody's distress due to what she told them was her alleged treatment at work by Professor McMahon.

613. Whereas we were not satisfied that Professor Clarke witnessed first-

hand the distress of Dr Pebody, nevertheless at the material time Professor Clarke was well aware of Dr Pebody's distress, she suggested that others knew, and she acknowledged that Dr Pebody was in a very bad place and could be in need of urgent help.

614. We therefore find that the Claimant made a disclosure of information which he reasonably believed tended to show endangerment to the health and safety of Dr Pebody.

615. As to whether the Claimant reasonably believed that this was a disclosure in the public interest, this is a difficult question. We remind ourselves that it is not for us to decide what is in the public interest or not, it is what the Claimant reasonably believed which is key.

616. This disclosure was about one person, Dr Pebody, although there is reference to the alleged treatment of four other named female administrative colleagues. As the Claimant argues, the legislation specifically refers to endangerment of the health and safety of any individual in the singular – it does not require there to be a risk to more than one person. In any event the alleged risk was about someone other than the Claimant.

617. We noted in the Claimant's closing submissions Mr Brittenden reminds us of the evidence of Professor Peake who said that the University approaches the issue of health and wellbeing as a matter of considerable importance. Professor Peake also accepted that the Claimant's email was an exceptionally serious email and that it would warrant immediate action.

618. Mr Brittenden says that Professor Peake's comments attests to the public interest nature of this disclosure, and further that it has to be in the public interest for any employer to take proactive steps to safeguard the health and wellbeing of staff whether individually or collectively. We agree with that submission – the nature of the interests affected is key in our assessment and the Claimant was disclosing information that Dr Pebody's mental health was at risk.

619. In this email the Claimant is clearly expressing his concern about the treatment of Dr Pebody and he is also stating that the Institute has a terrible record of support for female administrative staff and he named four others. The Claimant was disclosing information about alleged intentional wrongdoing towards more junior female staff within a large educational institution.

620. The Claimant was not raising concerns about his own employment, rather he was raising concerns concerning the wellbeing of another employee whom he believed to be in a fragile mental state and at risk of significant harm. The Claimant was also raising concerns about whether a large public institution was discharging its responsibilities towards one of its employees.

621. We considered it significant that the Claimant first approached the Institute Wellbeing Advocate rather than pursuing a grievance, and that Professor Peake described the communication as an exceptionally serious email requiring immediate attention. Those matters reinforce our

conclusion that the Claimant reasonably believed that the disclosure served a wider interest than the private interests of any one individual.

622. We remind ourselves it is not for the Tribunal to decide what is in the public interest. Taking all those matters into account, we are therefore satisfied that the Claimant subjectively believed, given the alleged risk to health and safety, that this was a disclosure in the public interest, and we also find that his belief was a reasonable one in the circumstances.

623. We will now go on to consider whether the Claimant also had a reasonable belief that the information disclosed tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation.

624. The Claimant was making explicit reference to Professor McMahon seeking to make Dr Pebody unemployed as part of a personal vendetta. It is clear to us that the Claimant was referring, as Mr Brittenden says, to the contractual obligations owed to Dr Pebody by the University as her employer.

625. Mr Brittenden says that the obligation is commonly understood to be the implied term of mutual trust and confidence. The Claimant is not a lawyer, he is not from an HR background, and we are not satisfied that he knew the precise name of that term nor its exact legal meaning, however he does not have to specific it as was clear in the judgment in ***Twist DX***. The Claimant was quite clearly talking about Dr Pebody being forced out of her employment and intentionally being made unemployed due to a personal vendetta from Professor McMahon, thus constructively unfairly dismissed. We accept that the Claimant subjectively believed that the information disclosed tended to show that matter.

626. We have rejected the Respondents' arguments about the Claimant's alleged bad faith or ulterior motives of seeking to damage Professor McMahon. As the Claimant said in his evidence, he had nothing to gain from this, and we believed him. We make it clear the Claimant could not possibly be seeking to avenge Professor McMahon's grievance against him as that had not even occurred yet.

627. As to whether the Claimant had an objectively reasonable belief, we find that it was. Whereas at this stage the Claimant had not been aware of the invite to end of contract consultation letter, the Claimant had spoken to Professor McMahon on 7 June 2021 who told him he wanted to zero out (cancel or delete) the contract where Dr Pebody worked 90% of her time; he had told the Claimant there was no role for her and no money to employ her; he said that she was a bully and her behaviour was unacceptable and if she was not careful there would be a disciplinary; and he said they should be encouraging her to apply for other jobs elsewhere.

628. We find it was entirely reasonable in these circumstances for the Claimant to have believed that the information he disclosed in his email of 20 July 2021 tended to show that the University had failed, was failing or was likely to fail to comply with a legal obligation owed to Dr Pebody – namely the implied contractual obligations of trust and confidence.

629. We will now consider the issue of the public interest. We accept that the Claimant subjectively believed that this was a disclosure in the public interest as he has been an honest and a reliable witness before us.

630. As to whether this was a reasonable belief, we initially found this to be a difficult matter given the contents of the decision in ***Chesterton***, in particular the reference to the four factors which we have referred to in detail in the legal section above. However, within the Claimant's closing submissions Mr Brittenden reminds us that the guidance in that judgment concerned the situation where that claimant had been complaining about a breach of their own employment contract, whereas in this case the Claimant was raising concerns on behalf of someone else. That distinction is key in our view.

631. In this case the Claimant was talking about the alleged risk of Dr Pebody being made unemployed due to a personal vendetta in the context of what he says was a terrible record of support for female administrative staff by the Institute – four other female members of staff are named, including Employee A who took her own life. As we have recorded, the Claimant is disclosing information about alleged intentional wrongdoing in a large education institution.

632. The Claimant also asks us to take into consideration that as Parliament had legislated to confer unfair dismissal protection this attests to the fact that there is a public interest in safeguarding employee rights. We placed limited weight on this argument.

633. The Claimant also told us in the hearing that he had nothing to gain from his disclosures and that they were altruistic, and we found this to be persuasive.

634. We again note that the Claimant was not complaining about his own employment, rather he was alleging that a senior academic leader, the Director of the Institute, was deliberately seeking to remove a more junior employee from her employment as part of what he perceived to be a personal vendetta. The Claimant reasonably believed that the manner in which the Institute, as part of a major educational establishment treated its employees, and whether senior managers exercised their authority lawfully, was a matter going beyond the private interests of one single employee.

635. We remind ourselves that it is not for Employment Tribunals to decide what is or is not in the public interest. The task is to decide whether the Claimant's view was a reasonable one.

636. Further, the Claimant reasonably believed that if such conduct were occurring it had implications not merely for Dr Pebody individually but for the Institute which he was saying had a terrible record of support for junior female staff. We are satisfied that the Claimant reasonably believed that this was a disclosure in the public interest.

637. We have already rejected the Respondents' arguments about the Claimant's alleged bad faith, his desire for revenge, and his alleged weaponisation of other people's misfortunes for his own ends.

638. The email of 20 July 2021 was sent to the Claimant's employer.

639. We therefore find that the Claimant's email of 20 July 2021 to Professor Peake was a disclosure qualifying for protection under s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

640. Even if we had found that the Claimant's email of 20 July 2021 contained insufficient factual content in order to amount to a reasonable belief on the part of the Claimant that it tended to show either of the matters under s. 43B(1)(b) and s. 43B(1)(d), we would nevertheless have found that it did so when considered together with the comments the Claimant made to Professor Peake in their subsequent meeting on 26 July 2021 (at Issue 1.5 below).

641. That meeting had been set up to discuss the Claimant's email of 20 July, and during that meeting there was discussion of the contents of that email, and the Claimant provided far more detail about his allegations against Professor McMahon and specifically that he was delaying and intending not to the sign the ORP grant in order to make Dr Pebody redundant, with more detail as to the impact upon her health and the risk of her being unfairly dismissed.

642. The Respondents concede with respect to Issue 1.5 the Claimant had a reasonable belief that the information disclosed in that meeting to Professor Peake tended to show the failings under s. 43B(1)(b) and (d).

643. The Claimant's email of 20 July 2021 to Professor Peake and the information he disclosed to him within the meeting of 26 July 2021 to discuss that email, can nevertheless be aggregated to constitute a qualifying disclosure on a cumulative basis as per the decision in ***Norbrook***.

Issue 1.2 - Email to Kaitlin Birrell dated 21 July 2021

644. On 21 July 2021 the Claimant forwarded to Ms Birrell in HR the email he had sent to Professor Peake on 20 July 2021. We have already found this to be a disclosure qualifying for protection under both s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

645. As we have recorded above, we have found that this disclosure may also be consolidated with the comments the Claimant made to Professor Peake at their meeting on 26 July 2021 on the basis of ***Norbrook***.

646. The fact that the email was sent to Ms Birrell and the comments were subsequently made to Professor Peake does not in our view prevent them being considered together as one protected disclosure – they concern the same matter. We find that the email of 21 July 2021 was also a protected disclosure under both s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

Issue 1.3 - Delays Document emailed to Deputy Directors on 25 July 2021

647. Within the Delays Document the Claimant disclosed that whereas the ORP grant application had previously been approved by the University,

however Professor McMahon had not accepted or approved the grant; Professor McMahon was embarking on a major rewrite of a number of grants including the ORP without authority and he was exceeding his powers; and Professor McMahon was producing further conditions including budget and personnel changes which could not be changed without permission from European partners which was unfeasible at such a late stage.

648. In addition, whereas the Claimant made general assertions that the delays in approving the grant had very serious consequences for Dr Pebody, he disclosed factual information that she had been issued with an end of contract letter (more correctly an invitation to end of contract consultation letter) whilst funding had been in place; the Department had routinely underwritten grants but had not done so for Dr Pebody; he expressed his belief (rather than disclosing a fact) that it was discriminatory to treat one employee in a different way to another; and he made a general assertion that the way Dr Pebody had been treated raised extremely serious concerns.

649. The information disclosed was a mix of specific factual content as well as some general assertions on the part of the Claimant. We have noted that the Claimant says that the information was communicated in an academic context and thus the recipients, Professors Reynolds and Challinor, can be presumed to have knowledge of grants and related processes, thus the Claimant was not required to spell this out by reference to the terms of any particular contract.

650. We agree with the Respondents that the Delays Document does not contain any information relevant to the health and safety limb under s. 43B(1)(d) therefore we dismiss that part of the issue.

651. As regards s. 43B(1)(b) and whether the Claimant reasonably believed that this tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject, the Claimant tells us that the legal obligations being relied upon are (i) the Declaration of Honour; and (ii) the obligations of the University in its capacity as employer owed to Dr Pebody.

652. The Respondents concede in their closing submissions that the Delays Document contains information capable of showing a failure which might lead to Dr Pebody's unfair dismissal. We therefore do not need to determine that matter ourselves and we therefore find that the Claimant reasonably believed this to be the case.

653. The Respondents argue that the Delays Document does not contain an allegation of an Equality Act 2010 breach, and we agree with them. Moreover, Mr Brittenden confirmed in the Claimant's closing submissions that was not being argued by the Claimant in any event.

654. The Claimant tells us that the communication tended to show a breach of a second legal obligation which was the Declaration of Honour.

655. The Declaration of Honour was not explicitly named within the Delays Document. The Declaration was referred to twice in the Claimant's

witness statement but in a different context, and the first time the Declaration was mentioned as being the source of the legal obligation relied upon was during the Claimant's oral evidence to us. The Claimant says that it was unnecessary for him to have referred specifically to the Declaration of Honour at the time of his disclosure in order for that to be found to be the legal obligation relied upon, and he relies upon the judgment in ***Twist DX***. We agree with that submission, it is clear that it does not need to have been expressed specifically at that time, it should however become clear by the time of the Tribunal hearing, which it now has.

656. The Claimant says that the Declaration was a legally binding agreement, and whereas the Respondents disagree about that in their closing submissions, we record two observations. Firstly, Professor Clarke who gave evidence on behalf of the Respondents confirmed in her oral evidence that it was in her view a legally binding agreement, and we note that she is the current Co-Director at the Institute.

657. Secondly it is unnecessary for the Claimant to be right that it was a legal obligation – all that he needs to demonstrate to us is that he had a reasonable belief that it was.

658. Further, as regards the breach of that obligation, the Claimant argued that he was relying on a passage in the Declaration that the information the University had provided for the ORP was correct and complete; and further that any attempt to modify the grant by Professor McMahon would be a breach of paragraph 4 of the Declaration where the University confirms that it had, or would have, the necessary resources needed to implement the action. The Claimant's argument was that if the University was in breach of the Declaration it could lead to termination of the University's involvement and return of the grant money which are public funds.

659. We agree with the Respondents that Dr Pebody's employment on the project was not a mandatory term of that Declaration and that her name does not appear in the Declaration nor the later Grant Agreement. However the role which Dr Pebody was performing was referenced in the associated documents which confirm what resources would be involved in the project, and we agree with the Claimant the University had signed the Declaration on the basis that the information it had provided was correct, and that it had would have the resources needed to fulfil its obligations.

660. We therefore find that the Claimant reasonably believed that the Declaration of Honour was legally binding and created legal obligations; he is not a lawyer; and moreover, even the current Co-Director of the Institute, Professor Clarke, believes that it is legally binding. Whether the document is legally binding is not the question – both individuals reasonably believe that it is.

661. We do not accept the Respondents' argument that the Claimant's evidence about the Declaration of Honour was made up on the spot – it was not referenced in the Delays Document as we have noted, but neither did it need to be. It was also not set out in the Claimant's witness statement either, however when we go back to the factual matters the Claimant was disclosing in that Delays Document he was clearly saying that Professor McMahon was seeking to make budgetary and personnel changes without

authority and which would require agreement and which would not be feasible at such a late stage.

662. The Claimant quite clearly had in mind the terms of the Declaration of Honour at the material time (leaving aside that he did not name it), and moreover both he and the Deputy Directors to whom he sent the Delays Document, are all experts in this area and would have understood the context. The Deputy Directors clearly understood there to be concerns about Professor McMahon's alleged interference with that grant as they challenged him about it at the time, and they had a similar conversation with Ms Macharia about it at that time as well, and they made reference to the principle of academic freedom which they had said was sacrosanct.

663. We therefore find that the Claimant subjectively believed that the information tended to show a breach of legal obligation (the Declaration of Honour). We further find that his belief was a reasonable one not least because he is an expert in this field and the Deputy Directors also shared concerns about Professor McMahon's actions in seeking to change the grant in the way that he was.

664. We therefore move on to consider the issue of whether the Claimant reasonably believed that this was a disclosure in the public interest, and we remind ourselves that we are looking at this from the context of both (i) the risk of failing to comply with a legal obligation which might lead to Dr Pebody's unfair dismissal; and (ii) the risk of failing to comply with the Declaration of Honour which could result in termination of the University's involvement in the ORP and return of the grant.

665. The Respondents in their closing submissions focus on the public interest with respect to the risk of Dr Pebody being unfairly dismissed, they do not address the risk of failing to comply with the Declaration of Honour. The Claimant argues that it is obviously in the public interest that institutions comply with their obligations and commitments they signed up to, particularly with a large value grant, in order to avoid frustrating the objectives of the grant, as well as negative implication for other partners. The Claimant reminds us that the grant income is public money.

666. We agree that the Claimant reasonably believed that his disclosure about the risk of breaching the Declaration of Honour due to the changes Professor McMahon was attempting to make to the ORP grant, was a disclosure in the public interest. We find that this is what the Claimant believed at the time, and that it was reasonable for him to have done so given the interest in education institutions meeting their commitments with respect to large projects of this nature, and further the risk of terminating the engagement and the potential return of public funds.

667. As regards whether the Claimant reasonably believed that the disclosure about the risk of Dr Pebody being unfairly dismissed was made in the public interest, we have noted the Respondents' arguments that this is an archetypal workplace issue about individual personal employment rights which they say has no features which might transform it into a public interest matter and the alleged wrongdoing was the error made in sending Dr Pebody the invitation to consultation letter which it describes as being inadvertently blameless administrator.

668. The Respondents go on to argue that there was no plot by Professor McMahon to remove Dr Pebody; Professor McMahon had doubts about the nature of the ORP; and there was delay and general confusion around whether the invitation letter ought to have been sent to Dr Pebody as there were questions which hung around the ORP project due to Professor Gilmore's extension application. The main thrust of the Respondents' submissions on this point however is that there is nothing which could have caused the Claimant to reasonably believe that this is something which should go from the realms of private employment tights and into the realm of public interest.

669. Whereas we recognise the merit in much of what the Respondents have argued, and in many cases it would be hard to see how someone could have a reasonable belief that a disclosure about unfair dismissal was a disclosure in the public interest, nevertheless this is a very specific set of circumstances. Moreover, as the Claimant has explained to us, much of what he was raising concerns about was interconnected and he was not complaining about his own treatment.

670. What the Claimant was arguing was that Professor McMahon had delayed and held up the grant; he was seeking to make financial and personnel changes to the grant which were outside of his powers; and that this risked breaching a legal obligation (under the Declaration of Honour) which in turn then impacted Dr Pebody as is it would breach the University's legal obligations to her with the risk of her being unfairly dismissed. This is what the Claimant had been arguing was a disclosure in the public interest – the deliberate changes to the grant in order to force someone out of their employment, specifically Dr Pebody. This is what we understood the Claimant to mean when he said that all these things were interconnected. The Claimant was alleging intentional wrongdoing by a senior academic within a large education institution.

671. With the specific circumstances of this case, the interconnection between the risk of the Declaration of Honour being breached, and the knock on effect of risking the unfair dismissal of Dr Pebody which was alleged to be intentional, we find that the Claimant believed that this was a disclosure in the public interest.

672. As to whether this was objectively a reasonable belief, we further rely on our earlier findings under Issue 1.1 above where we recorded that the Claimant reasonably believed that the manner in which the Institute, as part of a major educational establishment treated its employees, and whether senior managers exercised their authority lawfully, was a matter going beyond the private interests of one single employee. We therefore find that the Claimant's belief was also a reasonable one in these circumstances.

673. The Delays Document was sent to the Claimant's employer.

674. We therefore find that the Claimant made a disclosure qualifying for protection under s. 43B(1)(b) of the Employment Rights Act 1996.

Issue 1.4 – Delays Document emailed to Ms Macharia on 26 July 2021

675. On 26 July 2021 the Claimant forwarded to Ms Macharia the Delays Document he had sent to the Deputy Directors on 25 July 2021. We have already found this to be a disclosure qualifying for protection under s. 43B(1)(b) Employment Rights Act 1996.

Issue 1.5 - Meeting with Professor Peake on 26 July 2021

676. During this meeting the Claimant disclosed concerns about Dr Pebody's health specifically that she was not sleeping; she was tearful, withdrawn and depressed; the Claimant expressed his opinion that she had been treated with unconscionable cruelty; the Claimant alleged bullying of Dr Pebody by the Second Respondent; the Claimant said Professor McMahon told him it was his intention never to sign the Opticon contract, so that Dr Pebody would become redundant; he made reference to Dr Pebody having grounds for constructive dismissal; he further disclosed he considered that Dr Pebody was at risk of self harm due to difficulties in her personal life and her treatment by Professor McMahon.

677. The Claimant further disclosed that Professor McMahon had sent him further conditions on the grant which were impossible to satisfy; he repeated that Professor McMahon wanted to delay acceptance of the grant until Dr Pebody had been made redundant.

678. The Respondents concede that the Claimant had a reasonable belief that the disclosed information tended to show a risk to health and safety of Dr Pebody, and also a risk that she might be unfairly dismissed.

679. The Respondents do not agree that the Claimant had a reasonable belief that the disclosed information tended to show a risk of breaching a legal obligation by reference to the Opticon grant. We agree with that submission as the information disclosed was primarily about Dr Pebody's health and safety and the risk to her employment from the delays in signing the grant – it was not about the wider fallout from those delays as we have identified earlier (for example termination of the University's involvement and return of the grant).

680. As regards whether the Claimant had a reasonable belief that this was a disclosure in the public interest, the Respondents argue that this was a disclosure made in bad faith in order to secure the removal of Professor McMahon and that he did not have any beliefs about the public interest at all. The Respondents rely on the transcript of the meeting which records the Claimant repeatedly making reference to the dangers of releasing the Delays Document and the suggestion of Professor McMahon stepping down or stepping aside. The Respondents also note that the Claimant did not mention anything to do with the public interest in his witness statement when addressing this matter.

681. We are not persuaded that this was a disclosure made in bad faith as alleged. We recognise that the Claimant made repeated suggestions that the Delays Document would be harmful if released, and he made repeated suggestions that Professor McMahon should either step aside or step down. However, these comments must be seen in context.

682. At this stage Dr Pebody had presented to the Claimant as visibly

distressed, depressed, and in a fragile state, and this had been witnessed by others. Dr Pebody was attributing this to the alleged treatment by Professor McMahon and uncertainty with her employment, as well as due to personal problems at home. The Claimant had heard first-hand the comments about zeroing out the ORP in the 7 June 2021 meeting, and he recently engaged with Professor McMahon about signing the X5 form to accept the grant, to no avail. The Claimant had also seen Professor McMahon's attempt to edit the examiner's minutes to remove praise for Dr Pebody and he had observed the criticisms he was making of her to others.

683. With respect to the comments about the fallout from the Delays Document, it appeared to the Tribunal that the Claimant was seeking to compel Professor Peake as Head of School to intervene and to take some action and to sort out Dr Pebody's employment. As regards the comments about Professor McMahon stepping down or stepping aside, we drew the conclusion that the Claimant had lost confidence in Professor McMahon as Director of the Institute of Astronomy, and he wanted him to step down or aside as the leader of the Institute, for the good of the Institute.

684. We did not see this as part of a plot to remove Professor McMahon and we have again considered the Respondents' arguments about the Claimant seeking vengeance, but we come back to the same question of what was he avenging at this time? As far as we could identify, Professor McMahon had not done anything to the Claimant which might trigger some sort of thirst for vengeance on his part.

685. We therefore reject the argument that the Claimant acted in bad faith or for some other motivation.

686. Going back to the issue of whether the Claimant reasonably believed that this was a disclosure in the public interest, we repeat our earlier conclusion with respect to Issue 1.1 which concerned the 20 July 2021 email which the Claimant discussed with Professor Peake in their meeting on 26 July 2021.

687. We repeat that whereas this was a disclosure was about one person, Dr Pebody, within that earlier email which prompted this meeting, the Claimant referred to the other named female administrative colleagues whom he said the University had failed to support. As the Claimant argues, the legislation specifically refers to endangerment of the health and safety of any individual in the singular, it does not require there to be a risk to more than one person, and here the Claimant was raising concerns about someone other than himself.

688. In addition, Professor Peake has confirmed that the University approaches the issue of health and wellbeing as a matter of considerable importance, and he also accepted that the Claimant's email of 20 July 2021 which they had discussed in that meeting, was an exceptionally serious email and that it would warrant immediate action.

689. We agree that it is reasonable for the Claimant to have formed the view that it was in the public interest for an employer to take proactive steps to safeguard the health and wellbeing of staff, even if that is limited to just one member of staff.

690. As regards the risk of Dr Pebody being unfairly dismissed, we again acknowledge that in the normal course of events someone might subjectively believe that a disclosure of that nature was in the public interest, but it would be difficult to see why that would objectively be a reasonable belief given that it would primarily be a private dispute between an employee and their employer.

691. However, and as we have indicated before, context is relevant and the Claimant was specifically stating in his email which prompted the meeting, that the University had a terrible record of supporting female administrators, some of whom he said had been hounded out of their jobs, and Professor McMahon was intentionally seeking to do the same to Dr Pebody by delaying signing the grant, thus unfairly dismissing her. The comments the Claimant made in the meeting about Dr Pebody being forced out must be seen in that context, and as the Claimant says these issues are interconnected.

692. As we have already recorded, the Claimant was not complaining about his own employment but was alleging that a senior academic leader was deliberately seeking to force a more junior employee from her employment as part of what he perceived to be a personal vendetta. The Claimant reasonably believed that the way a major educational establishment treated its employees, and in particular whether senior managers exercised their authority lawfully, was a matter extending beyond the private interests of the individual employee concerned.

693. We note that the Claimant was silent on the public interest when he addressed this issue in his witness statement, however we drew no inference from that as it was a very long statement and the public interest was mentioned elsewhere. Whereas as the Respondents make very strong attacks on the Claimant's honesty and credibility, the Tribunal has not been persuaded by them.

694. Taking all the above into account, we are satisfied that the Claimant subjectively believed that this was a disclosure in the public interest. We also find that the Claimant reasonably believed that this was a disclosure in the public interest given that the connection between what he said about Professor McMahon, a senior academic and Director of the Institute, intentionally delaying signing the grant (or making changes to it) and the consequent impact upon Dr Pebody who could potentially lose her job within a large education institution as a result.

695. The comments in the meeting of 26 July 2021 were made to the Claimant's employer.

696. We therefore find that this was a disclosure qualifying for protection under s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

Issue 1.6 - Meeting with Deputy Directors on 26 July 2021

697. During the meeting the Claimant disclosed a combination of information and opinion.

698. The Claimant said that there had been inconsistent treatment of Dr Pebody and he referred to a named colleague where there had been checks before an invitation to consultation letter had been sent out; the Claimant agreed with comments that Professor Haehnelt made that there was extreme concern for Dr Pebody's welfare and that every single day mattered and the Claimant stated that she was in a very bad way; the Claimant repeated the comments in his addendum to the examiners' minutes where he said that Professor McMahon undermined Dr Pebody and expressed a lack of confidence in her work and that he emailed examiners to question her work and checking her marking, and that Professor McMahon had objected to thanking Dr Pebody in the minutes.

699. The Claimant further disclosed (inaccurately) that Professor McMahon told him that he wanted to zero out Dr Pebody; he alleged that it was obvious that Professor McMahon loathed Dr Pebody and wanted to make her redundant; and further information was disclosed that on one occasion Dr Pebody had not sept for two days and was sending repeated emails to him through the night trying to process what had happened to her.

700. The Claimant gave his opinion that if he was Dr Pebody he would be speaking to his lawyers; he said he was alerting as he was worried about Dr Pebody's mental stability; and finally he said the Deputy Directors had been presented with serious allegations of bullying and which taken someone [Dr Pebody] to the very edge of mental health.

701. We have already addressed earlier in this judgment that Professor McMahon had said that he wanted to zero out the ORP rather than Dr Pebody, however as that comprised 90% of her work it would likely have been the same outcome. We have also indicated that we considered that this was an inadvertent misspeak rather than a calculated misrepresentation as the Claimant had already made it clear to Professor Peake that there were covert recordings of the discussion.

702. The Claimant also repeated to the Deputy Directors the comments he had already made to Professor Peake about the harm the release of the Delays Document may cause, and he also repeated his view that Professor McMahon should either step down or step aside from his Director role.

703. The Respondents argue that the Claimant did not have a reasonable belief that this disclosure tended to show either a risk to health and safety or a breach of a legal obligation as they say the Claimant's motive was to remove Professor McMahon and to exploit Dr Pebody's situation to get at him.

704. We have already addressed that argument earlier in this judgment but we again record that it was not established by the Respondents any foundation for this alleged desire of the Claimant to remove Professor McMahon at this time. There was nothing we could see that Professor McMahon had done to the Claimant which could have motivated this alleged preoccupation with removing him. We again reject that argument, and we repeat our earlier conclusion that the Claimant was seeking to exert pressure for someone to take action to protect Dr Pebody's employment, and he had lost trust in Professor McMahon as the Director. We further record that even if part of the Claimant's motivation had been to secure the

removal of Professor McMahon, that would not preclude there from being a protected disclosure if the Claimant is still able to satisfy all aspects of the legal test.

705. We are again satisfied that the Claimant subjectively believed that the information tended to show a risk to the health and safety of Dr Pebody, and further that it was objectively reasonable for him to have done so. The Claimant had witnessed first hand Dr Pebody's distressed and deteriorating mental health; Dr Pebody confirms in her unchallenged evidence that she had made him aware of the same; and furthermore both Professor Haehnelt and Professor Belokurov confirm in their unchallenged witness statements that they observed Dr Pebody's distress due to her treatment at work (by Professor McMahon) and also the handling of her contract extension. Professor Clarke had also expressed that Dr Pebody was in a very bad place and could be in need of urgent help.

706. We therefore find that the Claimant made a disclosure of information which he reasonably believed tended to show endangerment to the health and safety of Dr Pebody.

707. As to whether the Claimant also had a reasonable belief that the information disclosed tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, the legal obligation relied upon is the implied duty of trust and confidence owed to her by her employer.

708. The Claimant was making explicit reference to Professor McMahon seeking to undermine Dr Pebody and her work to others within the Institute, and his desire to end her employment (save that it was the ORP to be zeroed out not specifically Dr Pebody). We accept that the Claimant subjectively believed that the information he disclosed tended to show that matter.

709. As to whether the Claimant had an objectively reasonable belief, we find that it was. By this stage the Claimant had been aware of the invite to end of contract consultation letter as he specifically referenced it and he alleged inconsistent treatment, and the Claimant had spoken to Professor McMahon on 7 June 2021 who told him he wanted to zero out (cancel or delete) the contract where Dr Pebody worked 90% of her time; he had told the Claimant there was no role for her and no money to employ her; he said that she was a bully and her behaviour was unacceptable and if she was not careful there would be a disciplinary; and he said they should be encouraging her to apply for other jobs elsewhere.

710. We find that the Claimant reasonably believed that the information he disclosed in this meeting with the Deputy Directors on 26 July 2021 tended to show that the University had failed, was failing or was likely to fail to comply with a legal obligation owed to Dr Pebody – namely the implied contractual obligation of trust and confidence.

711. We will now consider the issue of the public interest, and we again remind ourselves that it is not for us to decide what is in the public interest. The question is whether the Claimant reasonably believed that this disclosure was in the public interest, and that is a far lower threshold

although it still requires sufficient grounds for making such a finding.

712. We come back to the same factors as have previously been considered which is that this was a disclosure about the treatment of someone other than the Claimant and he had nothing to gain personally from the disclosure. The Claimant had been raising concerns about employee welfare and inconsistent application of employment practices within a major educational institution; and he had also been talking about the undermining of the work of someone engaged in marking examinations by the Director of the Institute.

713. We again repeat our earlier conclusion that the Claimant reasonably believed that the manner in which a major educational establishment treated its employees, and in particular whether senior managers exercised their authority lawfully, was a matter extending beyond the private interests of the one employee, Dr Pebody.

714. We are satisfied that due to the combination of factors we have referred to above, this takes the matter beyond what might be regarded as the usual private employment dispute scenario. We find that the Claimant objectively had a reasonable belief that this was a disclosure in the public interest. We agree with the Claimant that the fact that the Deputy Directors expressed the seriousness of the situation and that immediate action was needed, supports the finding that this was such a serious matter that it was reasonable for the Claimant to have formed the view that this was a disclosure in the public interest.

715. The comments in the meeting of 26 July 2021 were made to the Claimant's employer.

716. We therefore find that this was a disclosure qualifying for protection under s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

Issue 1. 7 – Submission of the Behaviours Document – 2 August 2021

717. Within this very detailed document the Claimant repeats all the matters which we have already found to be disclosures qualifying for protection under s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996. The Claimant included his original email of 20 July 2021 to Professor Peake (dealt with at Issue 1.1) and he included transcripts of the covertly recorded conversations to which we have already referred. The Claimant repeated the earlier disclosed information, including the zeroing out comments from Professor McMahon of 7 June 2021; the delays in signing or accepting the grant; the knock on effect which included the invitation to consultation letter sent to Dr Pebody; and the concerns raised about the impact upon Dr Pebody and her distress and deteriorating mental health; as well as the changes Professor McMahon sought to make the grant which the Claimant had alleged exceeded his powers and which could not be made without the permission of the European partners.

718. It is not necessary for us to record in detail all the information which the Claimant disclosed in the Behaviours Document as this would be a repeat of all the previous protected disclosures to which we have already referred in this very long judgment. Moreover, the Respondents concede

that the letter contains sufficient detail to satisfy the initial requirement to provide factual information as to health and safety and the risk of unfair dismissal. Accordingly we find that the Claimant had a reasonable belief that the information disclosed within the Behaviours Document tended to show a risk to health and safety and also a risk of unfair dismissal.

719. The legal issue for us to resolve is simply whether the Claimant had a reasonable belief that the disclosure of this information was in the public interest. The Respondents argue that the Claimant did not and they say that the letter was written and submitted after Professor McMahon had signed the X5 form and after the risk to Dr Pebody's job had been definitively removed. The Respondents say that this gives the lie to the Claimant's assertions that all he was interested in doing was to secure Dr Pebody's continued employment, and rather than being in the public interest the Claimant's overwhelming objective was to destroy Professor McMahon's career, and that he was seeking vengeance.

720. The fact that this document was submitted after Dr Pebody's employment was secured, and the repeated suggestions that Professor McMahon should stand down or stand aside, has caused us to question the motivation for sending this document which was, in general terms, a repeat of all the disclosures which had gone before it.

721. It is clear to us that by this stage the Claimant did have a desire for Professor McMahon to cease acting as Director but not for him to cease to be an employee of the University.

722. We have already addressed the issue of vengeance on a number of occasions in this judgment and we simply record we have never been told what it is that the Claimant was said to be avenging. At the date this document was sent the Claimant was unaware that Professor McMahon has submitted a Dignity at Work grievance against him. We therefore reject the argument that this was about vengeance.

723. It appeared to us that the motivation for sending the document was twofold. Firstly, we find that part of the motivation for sending the document was in order to raise concerns and to procure an investigation into about what had gone on previously with respect to the treatment of Dr Pebody and the delays in signing or accepting the grant by Professor McMahon, and also his proposed changes to the grant which allegedly exceeded his powers.

724. Secondly, we find that part of the Claimant's motivation was also for Professor McMahon to stand aside as Director of the Institute pending that investigation as the Claimant had lost confidence in him as leader of the Institute of Astronomy due to his perception of how Dr Pebody had been treated and the handling of the ORP grant. The Claimant was not seeking Professor McMahon's dismissal.

725. We did not form the view that there was any element of vengeance or bad faith on the part of the Claimant. We recongise that the Claimant was persistent and vigorous in the way he perused this, but we do not find that it was done maliciously or in bad faith. We again restate the Claimant had nothing to gain personally from this endeavour.

726. We are persuaded, as we have explained with respect to all of the other protected disclosures repeated within the Behaviours Document, that the Claimant subjectively believed that this was a disclosure in the public interest as he was raising concerns about the treatment of someone other than himself, including the risk to their health and safety and their deteriorating mental health, and this was raised in the context of how he considered that other female administrative staff had been treated or forced out of their roles within this large education institution. The risk to health and safety of one person is serious enough in our view to form a belief that it was a disclosure in the public interest.

727. We have already addressed above, repeatedly, that the Claimant reasonably believed that the manner in which a major educational establishment treated its employees, and in particular whether senior managers exercised their authority lawfully, was a matter extending beyond the private interests of just the one employee concerned.

728. Further we find that the Claimant subjectively believed, as an expert in this field, that it was a disclosure in the public interest due to what he understood to be the importance of education institutions complying with their legal obligations with respect to grants and their funding, and what he understood to be the potential ramifications of a breach, including termination of the University's involvement and return of the funds. We also noted that the Deputy Directors, Professors Reynolds and Challinor, were also very concerned about Professor McMahon's proposed changes to the grant without authority, as they referred to the principle of academic freedom as being sacrosanct.

729. Having taken all these factors into consideration, when looking at this objectively, we find that the Claimant had a reasonable belief that this was a disclosure in the public interest.

730. This was a disclosure made to the Claimant's employer.

731. We therefore find that this was a disclosure qualifying for protection under s. 43B(1)(b) and s. 43B(1)(d) Employment Rights Act 1996.

Issue 1.8 – 12 December 2023 grievance to Ms Rampton

732. The Claimant contends that the grievance disclosed information tending to show failures to comply with legal obligations and, originally, concealment of such failures. By the conclusion of this hearing, reliance upon concealment under s.43B(1)(f) had been withdrawn.

733. We accept that the Claimant held genuine concerns regarding the University's decision to permit Professor McMahon to obtain legal representation through the University's insurance arrangements in connection with the defamation proceedings. We further accept that the Claimant regarded these matters as serious and believed they deserved investigation. The fact that the Claimant was met with a wall of silence whenever he raised the topic reinforced his views.

734. Having examined the grievance as a whole, we are not satisfied that it disclosed information which the Claimant could reasonably believe tended to show a relevant failure within the meaning of s.43B.

735. The allegations advanced within the grievance depended largely upon speculation as to what information Professor McMahon and the University may have provided to its insurers, what it may have represented concerning the merits of Professor McMahon's defence, and whether the funding arrangements were appropriate.

736. The Claimant had only limited information available to him concerning these matters. Unlike the other disclosures, which were based upon events the Claimant had personally observed and documented, this alleged disclosure was substantially based upon inference, suspicion and disagreement with decisions that had already been taken.

737. We bear in mind that a worker need not be correct and that a protected disclosure may be based upon a mistaken understanding of events, however, there must still be information disclosed which is capable of tending to show a relevant failure and there must be a reasonable basis for the worker's belief. In our judgement that threshold has not been met with respect to this Issue.

738. We are also not satisfied that the Claimant's asserted beliefs concerning criminal fraud or insurance fraud were objectively reasonable on the information available to him at the time. The grievance identified no evidential basis from which such serious allegations could reasonably be inferred. Rather, they depended upon assumptions concerning matters which were unknown to the Claimant.

739. When we consider the grievance in its entirety, we find that it was not a disclosure of information which the Claimant reasonably believed tended to show a relevant failure under s.43B Employment Rights Act 1996.

740. Accordingly, we find that the Claimant’s grievance dated 12 December 2023 was not a disclosure qualifying for protection.

Detriments

741. The Claimant asks the Tribunal to consider whether there has been any form of institutional mindset or enmity or a collective memory which was prejudicial towards him. This has also been referred to as “groupthink.”

742. The Claimant relies upon the judgment of the Employment Appeal Tribunal in the ***Moussa*** case to which we have already referred earlier in this judgment and which is not repeated in detail here save to remind ourselves that the first instance tribunal in that case did not find that there had been any sort of conspiracy, however it had found that HR who were advising the managers had a negative view of that claimant and that the myriad examples of unfairness and less favourable treatment could not be simply explained by a string of unfortunate errors, and rather they showed the existence of an underlying negative attitude towards the claimant (within HR) shared and understood by management.

743. Ms Reindorf KC for the Respondents correctly reminds us that the judgment in ***Moussa*** is not a substitute for the legal question which we must grapple with in this case – the reason why the Claimant was treated as he was, and specifically whether the protected disclosures were a material (more than trivial) influence in the way in which the Claimant was treated.

744. We have not interpreted ***Moussa*** as altering that position. The Tribunal is simply being asked to consider the possibility, when faced with a series of poor or unfair decisions, whether these were genuine errors or whether they were the result of a shared negative view of the Claimant due to him having made protected disclosures. We simply interpret ***Moussa*** as asking tribunals to look more closely at how decisions have been reached.

745. We do not interpret ***Moussa*** as diluting the legal test we must apply, and we certainly do not accept that organisational enmity or a dislike of the worker is anywhere near sufficient to show causation in a case like this. The question we must answer in this case is whether the protected disclosure was a material (more than trivial) influence on how the Claimant was treated – nothing less than that will do.

746. We have been invited by Mr Brittenden KC to note the manner in which the Respondents sought to challenge the Claimant's credibility in these proceedings which he says reflects the institutional enmity towards the Claimant. It is not alleged that Ms Reindorf KC acted improperly in any way, she was acting on her clients' instructions and we have already explained that counsel conducted herself, like Mr Brittenden, entirely reasonably and professionally throughout and was of considerable assistance to the Tribunal as one might expect from senior counsel.

747. Nevertheless we have noted that the Respondents were keen to discredit the Claimant during the hearing and closing submissions including accusing him of shedding crocodile tears when referring to the death of Employee A and his concerns for Dr Pebody; the Claimant was accused of weaponising her death for his own purposes; his honesty and integrity was challenged; he was accused of performing to his CVP audience of social media followers; he was further accused of seeking vengeance on Professor McMahon and becoming fixated on damaging and persecuting him. Where there has been delay in a process the Respondents have been quick to point the blame at the Claimant.

748. These were incredibly serious challenges of someone who was complaining about being victimised for whistleblowing. There was nothing improper about the way the challenges were put by Ms Reindorf KC who was acting on her client' instructions, and had the Tribunal felt things had gone too far then we would have intervened, but we had no cause to do so.

749. Nevertheless, we agree, as Mr Brittenden has asserted, it was suggestive of considerable animosity towards the Claimant now. However, in our view it does not automatically follow that it is proof of organisational enmity towards the Claimant at the material time – these proceedings may very well have become embittered as the case has progressed, and we are mindful not to imply motives to people in 2021-2024 from cross examination in 2026 many years after the events being complained of. This has been a

long and hard-fought case, but our focus is firmly on what was happening at the material times and the reason why.

750. We also avoid the temptation of applying any form of but for test when we consider the way in which the Claimant was treated. Our focus is on the reason why, and we will examine closely the Respondents' explanations for the way they say they treated the Claimant.

751. Making a finding that someone subjected a worker to a detriment for whistleblowing is a serious matter – it could negatively impact their reputation and their career. Like findings of discrimination or victimisation, they should not be taken lightly, and they will require sufficient evidence to justify them. The legal test however does not require tribunals to identify any sort of malice or ill intent on the part of the employer – we are simply looking to see the reason why things happened as they did.

752. It is also useful for the Tribunal to remind itself that we approach our decision on the balance of probabilities and what is more likely than not to have been the reason why – we do not apply a standard of proof any higher than that.

753. We place on record our observations, as indicated earlier in this judgment, that manner in which some of the decisions reached in this matter appeared to the Tribunal to have been taken in a confusing and opaque way. Many of the decisions taken appeared not to have come from the decision makers themselves but appeared to have been served up to them from either the HR department (with input from legal) or the Registrary as a *fait accompli* which they were then asked to put their names to or to say if they disagreed.

754. In the industrial experience of this Employment Tribunal, letters and decisions are often drafted with the input of HR and lawyers, however it remains the role of advisers to provide advice and for decision makers to be the one who makes the decision. We appreciate that sometimes decision makers, as in this case, are very senior and busy people, however if they do not have the time to make a decision then perhaps that is something which should have been considered before agreeing to act as a decision maker on a grievance or an appeal.

755. We would have expected to have seen a decision being reached first then help being provided to draft it – not as often happened here a decision being reached by HR which the decision maker is then asked to sign if they are content. The temptation is to sign it without thinking about it properly, which is what looks to have happened repeatedly in this case.

756. Our difficulty, and our concern in this case is that in some instances there was no evidence at all of independent thought by the decision maker prior to the draft decision being presented to them to check, nor was there any example of the decision maker querying or challenging the decision they were asked to approve. It appeared to the Tribunal that in some instances HR had overstepped the boundary between advising and deciding, and that some of the decision makers had abrogated their decision making.

757. This is an incredibly unfair way to reach decisions because the complainant will not be able to identify who made the decision, but more than that, they may not be able to understand how that decision was reached. Where the adviser is then seen to have advised multiple people at multiple stages in say a grievance or a whistleblowing process, and where they have overstepped their role, as has clearly happened in this case, it opens the door to considering whether there has been any sort of organisational enmity within HR or the Registrary and whether their views on the Claimant permeated their advice or the decisions they prepared for decision makers.

758. We simply restate our concerns that in the absence of a clear paper trail demonstrating how decisions have been reached it raises concerns about how and why a decision was reached.

759. We make it clear that we do not find that there was any formal conspiracy against the Claimant. Nor do we find that every individual involved acted out of conscious hostility towards the Claimant for making a protected disclosure. However, following the disclosures made from July 2021 onwards, the Claimant became closely associated with allegations concerning the treatment of Dr Pebody, the handling of the ORP grant, and Professor McMahon's conduct.

760. The disclosures were potentially highly damaging both to Professor McMahon and to the reputation of the Institute of Astronomy and to Cambridge University. We noted that from the outset the University did not even want to consider the matter under the Whistleblowing Policy, and we have found that over time, an institutional mindset developed in which the Claimant came to be viewed as a source of difficulty and continuing reputational risk due to his protected disclosures which might damage the Institute and the University.

761. We are satisfied that this attitude shared by a number of individuals (but not all of them) materially influenced a number of subsequent decisions, even where those taking the decisions were not themselves the original recipients of the disclosures.

762. We will now address each detriment in chronological order.

Issue 4.3 – Professor McMahon submitting the 29 July 2021 complaint against the Claimant (Detriment 3)

763. The Respondents concede this was a detriment to the Claimant. The issue for the Tribunal to resolve is whether the protected disclosures were a material (more than trivial) influence upon that treatment.

764. We have already found that Professor McMahon was aware of two of the Claimant's protected disclosures at the time of submission of the grievance.

765. Professor McMahon had been made aware of the contents of the original 20 July 2021 email to Professor Peake (also shared with Ms Macharia and the Deputy Directors), which raised concerns about his treatment of Dr Pebody.

766. We have found that the contents of that 20 July 2021 email were discussed in the meeting between Professor McMahon and Professor Peake on 27 July 2021.

767. The allegations within that email were also discussed in the meeting between Professor McMahon and the Deputy Directors on the same day. This was clear from the contemporaneous documents to which we have already referred but also the oral evidence of Professor Challinor who confirmed he believed that Dr Pebody's treatment was discussed in their meeting. Professor Reynolds provided consistent evidence that the treatment of Dr Pebody was discussed.

768. The Claimant had also sent Professor McMahon the Delays Document on 26 July 2021.

769. The Claimant also sent Professor McMahon an email on 27 July 2021 at 10:31am confirming he had been making recordings of their meetings; that Professor Peake had asked for a transcript of them; that the Claimant considered his treatment of Dr Pebody to have been exceptionally cruel; and the Claimant's view he should stand down pending the matter being fully investigated. We also found that email had been discussed in the meeting between Professor McMahon and the Deputy Directors that day.

770. Mr Scott-Joynt, Ms Rampton and Professor Ferran all failed to examine what Professor McMahon knew about the complaints which had been made about him prior to submission of his grievance, nevertheless we have already found that Professor McMahon would have understood that an investigation into his conduct towards Dr Pebody was likely – not least because it was the crux of the Claimant's email to him of 27 July 2021 at 10:31am. We simply did not accept Professor McMahon's evidence to us that he did not understand the language in that email.

771. Professor McMahon has demonstrated a tendency towards retaliatory behaviour starting with the covert monitoring of Professor Gilmore and Dr Pebody by logging into the Eduroam logs. We understood that to have been something he was not entitled to access for that purpose.

772. In addition, following his exculpation in the Whiting Report, Professor McMahon expressly sought the removal of both Professor Gilmore and Dr Pebody, and was warned about this by Professor Peake at the time. We noted that in doing so Professor McMahon sought to justify removing Professor Gilmore due to an issue over alleged falsification of meeting minutes which is something he had not raised earlier.

773. These efforts included contacting an external stakeholder, Professor Cuby, and wrongly advising him he had been asked to review the grant – this was totally untrue, and he then asked him to keep the matter confidential.

774. The comments made by Professor McMahon to the Claimant about Dr Pebody during the 7 June 2021 meeting were incredibly hostile. We have also referenced other areas of retaliatory conduct, such as the

attempted removal of praise for Dr Pebody from the examiner's minutes and also the extra scrutiny over the iPad purchase, and other instances which are not repeated here.

775. Professor McMahon also confirmed in his evidence that when he becomes emotional it could take him a week to calm down.

776. Professor McMahon's grievance was sent two days after the Claimant's email to him of 27 July 2021. A mere coincidence in timing is insufficient on its own to demonstrate causation, but it is still a factor in the overall mix.

777. Ms Akroyd told us that Professor McMahon had been thinking of raising a grievance for some time, however that was a grievance about other people, it was not about the Claimant and he continued to speak candidly to him in private up to this period – he clearly had not been thinking of complaining about the Claimant beforehand.

778. Professor McMahon and the Respondents argue that the grievance was sent because of the way the Claimant went about raising his complaints about Professor McMahon. Essentially it is said to be that the grievance was sent because of the Claimant sharing the Delays Document in the way he (and others) had done so, and tabling it for discussion at a staff meeting which would have been damaging to the Department and to Professor McMahon, and he said that this was bullying. In essence what the Respondents seek to do is to separate the manner of the Claimant raising his concerns from the contents of those concerns.

779. We recognise that the circulation of that document and the proposal to present it at a staff meeting would have caused Professor McMahon, as Director of the Institute, considerable concern and that he would have felt undermined and embarrassed by it. We had no difficulty in accepting that the manner of the Claimant raising his concerns was part of the reason why Professor McMahon brought his grievance, however we were not satisfied that was the only reason why. It appeared to the Tribunal that the contents of the Claimant's protected disclosures up to that date, which Professor McMahon had been aware of, were also a material influence on his decision to issue that grievance.

780. Firstly, if the manner the Claimant raised his concerns was the only reason for the grievance, we could not understand why Professor McMahon sought to bring up allegations from three years earlier concerning how the Claimant had allegedly sent disrespectful emails to support staff. That had absolutely nothing to do with the Delays Document.

781. Moreover, this alleged behaviour from three years earlier did not even concern Professor McMahon, so it seemed strange for it now to be raised as a grievance by him as opposed to being dealt with as a disciplinary by him as the Director if he was at all concerned. We find that Professor McMahon had not been genuinely concerned about this, rather it was raised to deflect attention away from him and to attack the Claimant and to undermine the Claimant's concerns being raised about him.

782. Secondly, we could not understand why Professor McMahon sought to criticise the Claimant for not having requested that the Department underwrite Dr Pebody's employment. It was not the Claimant's role to do so as he was not the PI on that grant, however as a matter of fact that is what he had been asking Professor McMahon to do. In addition there was no need to ask for underwriting as the funds had been in place since 1 March 2021 which Professor McMahon had known. The accusation made no sense to the Tribunal.

783. The specific allegation that the Claimant (and others) had used Dr Pebody's stress and anxiety to attack Professor McMahon did appear to the Tribunal to be deflective, done as Mr Brittenden says to invert the analysis towards the Claimant away from him. No evidence was produced with the grievance to support such a serious allegation against the Claimant. Nothing has been produced since which would have served as a foundation for the allegation either, and Dr Pebody who provided a witness statement on behalf of the Claimant clearly does not consider that she has been weaponised by the Claimant.

784. Thirdly, Professor McMahon never explained in the grievance, nor in the subsequent investigation, nor in the defamation proceedings, nor even in these Tribunal proceedings, what false and unsubstantiated allegations it is that he was accusing the Claimant of making. Despite repeated requests and court hearings, it has never been explained.

785. Fourthly, we also noted Professor McMahon's reference in the grievance to UKRI now having a bullying and harassment condition in the terms and conditions of its grants. We understand that if the allegations had been proven that could have negatively impacted the ability of those named to have sourced funding or to receive grant income and that in turn could have negatively impacted their future employment. This reminder from Professor McMahon, perhaps stating what must have been obvious to Professor Peake when receiving the grievance, we find was unnecessary to have included unless the intent was to cause damage to the Claimant and the others being complained about. The undertone did appear to us to be vindictive.

786. In addition, we have noted the decision of Mr Justice Linden in the defamation proceedings with respect to the two imputations he had identified. We acknowledge that court was not tasked with deciding whether the allegations in the grievance were retaliatory, the focus was on defamation alone.

787. Nevertheless, it was recorded that Professor McMahon had accepted that the first imputation was defamatory (with respect to the Claimant having knowingly made false allegations); and the court found the second imputation (exploiting Dr Pebody's stress and suffering for the Claimant's own ends) also to be defamatory.

788. We have referred to Professor McMahon's evidence to us that he disagreed with Mr Justice Linden which he said was just his view and the University would make its own decision, nevertheless that was the court's determination on those matters. The fact that nothing in support of those allegations has been produced in the years that have followed, causes us

to infer that not only were the allegations baseless, but Professor McMahon knew they were baseless (as regards the Claimant) when he raised them.

789. Taking all these matters into account, we therefore find that the grievance filed by Professor McMahon on 29 July 2021 was influenced by the protected disclosures we have identified.

790. As to the level of influence, we find that they were far more than trivial influences on that grievance. The protected disclosures were not the sole reasons for the grievance, the manner in which the Claimant and others sought to distribute the Delays Document, was clearly a factor, but nevertheless the contents of the protected disclosures were a large part of the reason why Professor McMahon filed his grievance.

791. As regards time, we record our agreement with Mr Brittenden that in this case the submission of that grievance cannot be seen as a one-off act with continuing consequences for a number of reasons.

792. The submission of that grievance was the first step in a process and it set in train a number of things. It caused the Dignity at Work policy to be engaged and the subsequent investigation which followed, and which endured for an incredibly long period.

793. We agree that a grievance subsists until it is concluded – either until it is withdrawn or finally determined, and we further agree that it is capable (in some cases) of being analysed as an act which extends over a period (like a disciplinary suspension) because the Claimant remained subjected to the investigation which followed, and we record it lasted so long (in part) because Professor McMahon would not engage with evidencing it and explaining what he accused the Claimant of saying which was false or unsubstantiated.

794. The Claimant was capable of withdrawing the grievance before and after the defamation proceedings but chose not to do so.

795. This state of affairs endured until the eventual outcome of that investigation process which found that the allegations against the Claimant were themselves unsubstantiated. As to this ongoing state of affairs, the Claimant was under the cloud of suspicion with the threat of a potential disciplinary hanging over his head, as well as potential repercussions which could follow with respect to the UKRI anti-bullying terms and conditions.

796. We agree it would be artificial to segment what actually happened in this case into various acts and to require the Claimant to have filed a claim at stage something happened in that investigation process, or further still, every time Professor McMahon was asked by Mr Scott-Joynt to particularise and to evidence his complaint and failed to do so – thus needlessly lengthening this process to which the Claimant had been subjected to.

797. In our view the specific facts of this case mean that the initial grievance from Professor McMahon, coupled with the ongoing failure to particularise it, and the unusual tolerance of that by the University, can be properly viewed as a state of affairs and an act extending over a period within the meaning of s. 48(4)(a) Employment Rights Act 1996, and as such

it has been brought within time. We make it clear that period ended on 11 July 2023 when Professor Ferran finally dismissed Professor McMahon's grievance.

798. We further find that, even if the submission of the grievance on 29 July 2021 was not itself an act extending over a period, it formed part of a series of similar acts and failures within the meaning of s.48(3)(a) of the Act. The grievance was the first manifestation of what became a continuing pattern of detrimental treatment towards the Claimant following his protected disclosures. That pattern included permitting the grievance to continue despite the absence of supporting evidence; the repeated failure to address concerns that the grievance was retaliatory; the repeated delay in dealing with matters raised by the Claimant; the refusal to engage substantively with a number of complaints he subsequently raised; and decisions which repeatedly sought closure of issues arising from the protected disclosures rather than properly investigating them.

799. We find that these acts and omissions were linked, having first arisen from the Claimant seeking to raise concerns about the treatment of a junior colleague and the risk to her health, before going on to raise concerns about the way in which those concerns were handled and his own treatment. This involved overlapping decision-makers and advisers, and formed part of an ongoing course of detrimental treatment arising from the Claimant's protected disclosures with the common thread whereby those involved sought to shut down the complaints in order to shield the University from criticism. We therefore find that they comprised a series of similar acts and failures for the purposes of s.48(3)(a).

800. We therefore find that detriment 3 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent and the Second Respondent.**

Issue 4.1 – R1 investigating and continuing to investigate R2's complaint when it was clear that it was malicious and/or vexatious, including conducting the investigation in breach of R1's Dignity at Work Policy (Detriment 1)

801. This allegation is really in two parts, firstly the decision to accept the grievance and to investigate it, and then secondly the act of continuing to do so.

802. The allegation that the Claimant made false and substantiated allegations in the Delays Document has never been explained or substantiated itself. Professor McMahon conceded before the High Court that it was defamatory.

803. As regards the allegation that the Claimant failed to request that the Department underwrite Dr Pebody's contract and instead used the stress and anxiety caused to Dr Pebody to claim that Professor McMahon had behaved inappropriately, this was found by Mr Justice Linden to be defamatory. The complaints of defamation were settled by way of a Tomlin Order in November 2023 which effectively withdrew the allegations of bullying.

804. Whereas we do not know anything about the alleged disrespectful emails from the Claimant three years earlier towards support staff, it was clear that this was raised solely for the purpose of retaliating against the Claimant for having made protected disclosures about Professor McMahon's conduct.

805. We were not persuaded that it would have been immediately apparent to the University that the grievance was malicious and vexatious from the start. To have unliterally decided to reject the grievance without any investigation at all, would have been highly irregular and likely exposed the University to criticism. Nevertheless, Professor Peake was on notice of the potential for retaliation by Professor McMahon as he warned him about it after the Whiting Report, and he had been warned about him by the Claimant who told him that he feared reprisals.

806. The Respondent's policy provides that evidence should be included with the grievance (not that it must) and in our industrial experience it is usual for the grievance to contain the bare bones of a complaint and then the evidence follows shortly thereafter.

807. The First Respondent's Dignity at Work policy also provides that informal resolution should be attempted first where possible. It does not mandate informal resolution in every case as a precondition to a formal investigation.

808. The Tribunal's view is that there was enough within Professor McMahon's email to have justified commencing an investigation, and that the complaints could shortly thereafter be clarified.

809. Even though Professor Peake was on notice of the potential for retaliation, we did not consider that it would have been immediately obvious to him that the grievance was malicious and vexatious in its entirety at that stage.

810. Moreover, even though informal resolution was not attempted and the complaints contained scant information (and referred to one historic issue which had not been dated) with no supporting evidence, we were not persuaded that the Claimant's previous protected disclosures were a material influence on the decision to accept that complaint and to allow it to proceed to an investigation. In our view, those protected disclosures had less than trivial influence on that decision, rather it was simply the fact that Professor Peake's view was that a complaint had been made and should be investigated.

811. However, it would have become clear to the University during the life of that investigation that the complaints were likely to have been malicious and vexatious because despite numerous requests Professor McMahon failed to supply his evidence or particularisation on what he said was false and unsubstantiated within the Delays Document that the Claimant had prepared.

812. The email from Ms Hudson (HR Director) dated 11 August 2022 is key. Within that email Ms Hudson identified the failure of Professor

McMahon to provide information and the impact of delay upon the Claimant; and she wrote that his grievance was a counter complaint.

813. It was clear to Ms Hudson, as it must have been to everyone else on that email chain, including Professor Peake and Ms Akroyd, that Professor McMahon's grievance was made to counter that of the Claimant. In other words, all would have known by this stage (some 13 months later) that it was baseless (as nothing had been provided to support it) and it had been filed in retaliation against the Claimant and was therefore likely malicious and vexatious. No-one within that email chain challenged Ms Hudson on her view that it was a counter complaint, yet the investigation was nevertheless allowed to proceed and it was almost a further year before Professor Ferran finally rejected the grievance as unsubstantiated.

814. As to whether the decision to continue to investigate the grievance was materially influenced by the Claimant's protected disclosures, we have found it impossible to understand how the grievance could have been allowed to continue in these circumstances, for so long and with nothing provided to support it, when the HR department and Professor Peake were on notice of the potential for retaliation, and even the HR Director, Ms Hudson, considered that it was a counter complaint.

815. The Tribunal was very concerned that by this stage the Claimant had been subjected to an investigation contrary to natural justice (incorporated and referenced in the Respondent's Dignity at Work policy) as he still did not know the case against him.

816. This is not a small employer or a poorly resourced HR department, and in our view, as time went on it ought to have become clear that Professor McMahon was seeking to retaliate against the Claimant yet no one attempted to put a stop to this investigation to which he had been subjected, despite there being no evidence to support it.

817. The Respondents' case rests on the reasonableness of accepting and initially investigating Professor McMahon's case, but the allegation is clearly in two parts – the second being the continuation of that process. The Respondents have not addressed the second part of the allegation which is the continuation of that process. The failure to provide an explanation does not of itself (unlike discrimination) mean that we should uphold the complaint as it may be that the Tribunal may identify a reason of its own for the treatment complained of.

818. In this case we cannot find any credible explanation why that investigation was permitted to continue following the time of Ms Hudson's email of 11 August 2022 where it had become clear this was a counter complaint (a retaliation in other words) and nothing had been provided to support it.

819. We have taken into consideration what the Claimant says about organisational enmity and groupthink, however as we have explained, that is not a substitute for the statutory question we must resolve. Nevertheless we have drawn the inference due to the inaction from the HR department and Professor Peake at this time, that the Claimant's protected disclosures had been at least a material influence on the decision to allow this process

to continue and not to put a stop to it 13 months in when nothing had been provided to support a grievance which by now was clearly retaliatory and malicious and vexatious.

820. We form the above view from our assessment of all the evidence in this case, including how the Claimant was subsequently treated when he raised his own grievance complaints and the poor handling of those matters.

821. When considering the issue of causation, it would be wrong to consider each detriment in isolation and to undertake a fragmented approach. We must look at the bigger picture, if we fail to do so we risk losing the eloquence of some of the evidence. As will be seen in the remainder of this judgment, the handling of this matter within the University has been problematic and deeply unsatisfactory. The picture which emerges is one of repeated extreme delay, complaints not being addressed, decisions which seemed opaque, and the shutting down of complaints abruptly in the sense that the thing being complained about remained unresolved. This took place within the wider context of many (but not all) of the letters and outcomes apparently being prepared by a small circle of individuals within HR or by the Registrary.

822. It became clear to us in this case, as in the case of ***Moussa***, that many within the HR Department, and some of the decision makers (including the Registrary) formed a negative view of the Claimant and that the many examples of unfairness poor treatment of the Claimant could not be simply explained by a string of unfortunate errors or incompetence, rather we find they showed the existence of an underlying negative attitude towards the Claimant which we infer was due to his whistleblowing.

823. The Tribunal finds that a highly unusual degree of indulgence came to be afforded to Professor McMahon's complaint notwithstanding the evidential deficiencies which had become apparent.

824. We compare this treatment to how the Claimant later came to be treated when he provided a properly particularised grievance about the use of the insurance policy. The Claimant was told this had been rejected because he had not attempted informal resolution in the first instance. As we found he had in fact raised this informally, however that was the reason which was given at the time. In Professor McMahon’s case he did not attempt informal resolution which was not a bar to him pursuing his complaint against the Claimant, and then it was permitted to proceed for almost two years without having provided evidence to support what he said were false and unsubstantiated allegations by the Claimant.

825. We recognise that it was Ms Rampton the Registrary who was responsible for rejecting the Claimant’s grievance about the insurance policy (Dr Glover having refused to engage at all), whereas it was HR and Professor Peake who allowed Professor McMahon’s grievance to continue, thus different people were involved, but nevertheless the difference in treatment within the same institution on comparable matters was obvious and caused us to query the motivation.

826. We find that there developed what might properly be described as an organisational desire within HR to continue and complete the Professor

McMahon’s grievance process, rather than confront the possibility that Professor McMahon’s grievance was in retaliation to the Claimant’s protected disclosures.

827. We therefore find that the continuation of the investigation, when it ought to have become clear it was likely to have been retaliatory malicious and/or vexatious, was materially influenced by the Claimant's protected disclosures.

828. As regards the issue of time limits, the complaint was about both accepting and investigating the grievance and continuing to investigate it once it became clear that it was likely to be malicious and vexatious.

829. The investigation was commenced in March 2022, the outcome was completed on 4 March 2023, it was sent to the Claimant on 26 April 2023 and the Claimant filed his first ET1 less than three months later on 12 July 2023.

830. We rely on our earlier findings above that the investigation and continuing that investigation was an act extending over a period within the meaning of s. 48(4)(a) Employment Rights Act 1996, and as such was brought within time. This was clearly not a one off act with continuing consequences – the investigation was prolonged and beset by delay, inaction, and a lack of ownership. The indulgence given to Professor McMahon to evidence his complaint was extraordinary.

831. We further find that this was in any event part of a series of similar acts or failures under s. 48(3)(a) Employment Rights Act 1996 for the reasons we have already identified under issue 4.3 above.

832. We therefore find that detriment 1 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent.**

Issue 4.5 – R2 informing C’s colleagues and peers about R’s 29 July 2021 complaint against C, risking damage to C’s reputation (Detriment 5)

833. We have already found that between 29 and 30 July 2021 Professor McMahon acted in breach of paragraph 5.1.3 of the confidentiality provisions of the Respondent’s Dignity at Work Policy when he disclosed his grievance to Dr Walton, Professor Reynolds, and Ms Macharia.

834. We find that this was a detriment to the Claimant for two reasons. Firstly, the Claimant had an expectation under that policy that complaints about him would remain confidential, particularly so when they emanated from the Director of the Institute.

835. Secondly it was clear that the breach had caused some damage to the Claimant as Professor Reynold’s replied *“Good!”* when Professor McMahon told him about his grievance. The breaches also risked damaging the Claimant in the opinion of Dr Walton and Ms Macharia as well, although we do not go as far as to find that they did actually damage

his reputation, although the allegations were incredibly serious and certainly had the potential to do so.

836. At no point were any of these three asked to keep the matter confidential, although Professor Reynolds would likely have discovered the matter anyway given the interactions between the Deputy Directors and the Claimant over Dr Pebody's employment situation and associated matters including the Delays Document.

837. As to the matter of causation, we noted the expressed pleasure or satisfaction from Professor McMahon to Professor Reynolds where he stated that he had played a very long game, and also his comment to Dr Walton that the Claimant and Professor Haehnelt were amateurs compared to Professor Gilmore. These comments suggested a degree of vindictiveness on the part of Professor McMahon.

838. We have already found that the bringing of the grievance by Professor McMahon was materially influenced by the Claimant's protected disclosures. It does not automatically follow that the breaches of confidentiality of that grievance were also materially influenced by the grievance.

839. As Mr Brittenden points out, there was no cogent basis for Professor McMahon sharing the grievance as he did (although he maintains he was entitled to do so but does not adequately explain why), and the inference we are asked to draw is that it was to garner support from others; to diminish the standing of the Claimant; and to pitch others against him, due to his having made protected disclosures.

840. We agree with that submission, and we find that the sharing of the complaint formed part of an attempt to influence opinion regarding the allegations being raised against him and against the Claimant for raising these. As those allegations arose directly from the protected disclosures, we find that the reason for doing so was materially influenced by the Claimant's disclosures.

841. As to the issue of time, we find that these breaches of confidentiality cannot be artificially separated out from the bringing of the grievance (then failing to evidence it) which we have found to be an act extending over a period lasting until Professor Ferran dismissed it on 11 July 2023. We do not find that it was simply a series of three one off acts at the same time with continuing consequences, rather it was part and parcel of the act of retaliating against the Claimant for raising his concerns; seeking to influence others against him by breaching confidentiality; continually failing to evidence that grievance for up to two years despite numerous requests to do so; and then failing to withdraw the grievance in April/May 2023 when it became undeniable that it had been based on a false premise. Those matters are intrinsically linked so as to form a continuing act.

842. We therefore find the complaint was brought within time under s. 48(4)(a) Employment Rights Act 1996.

843. Moreover, we also found that these breaches of confidentiality were part of a series of similar detrimental acts or failures under s. 48(3)(a)

Employment Rights Act 1996 which were materially influenced by the Claimant having made protected disclosures. There is a clear pattern of detrimental treatment towards the Claimant from 29 July 2021 all the way up to the end of 2024 with the mishandling of the Claimant's grievances by the Registry and Professor Prentice. We remind ourselves that the University, as Professor McMahon's employer, is vicariously liable for his actions.

844. We again make it clear that there was no formal conspiracy between these people to exact revenge on the Claimant, rather they shared the same view that he was a problem as he had been whistleblowing, and they shared an inclination to shut this down, and to protect the reputation of the University.

845. We therefore find that detriment 5 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First and Second Respondents.**

Issue 4.2 – R1 delaying the conclusion of the investigations into (a) C's protected disclosures and (b) or R2's complaint about C dated 29 July 2021, despite it being clear that the latter was unfounded without merits, C alleges, vexatious and/or malicious (Detriment 2)

846. The time taken to conclude the investigations into both matters was staggering. The whistleblowing allegations and the Dignity at Work complaint were raised in July 2021, and the investigation report for the Dignity at Work complaint was not produced until March 2023, and the Claimant did not receive a copy until the following month in April 2023. The Claimant did not then receive a copy of the investigation report into his complaints until May 2023.

847. During those almost two years the Claimant had the risk of a disciplinary process hanging over his head. We have no hesitation in finding that taking just under two years to investigate these matters was a detriment.

848. Whereas the University has sought to blame most of the delay on the Claimant, and attributes the remainder to Mr Scott-Joynt's bereavements and workload, that is deflective and the reality is more nuanced.

849. Firstly, it was clear that this was not a complaint about the Claimant's own treatment and the University's insistence that it would deal with the matter under the Dignity at Work Policy (rather than the Whistleblowing Policy) did not make sense. The delays in resolving that situation were not the fault of the Claimant.

850. There was also an incredible delay in appointing Mr Scott-Joynt in the first place, and again whereas the University blames the Claimant for objecting to the appointment of B3Sixty, it appeared to the Tribunal that the Claimant had an understandable concern given their recent involvement in the separate Whiting Report, moreover it ought not have taken so long to have found an independent person to act as a replacement. Mr Scott-Joynt

was not appointed until March 2022, some eight months after the complaints and disclosures were filed.

851. There was then the repeated failure of Professor McMahon to provide evidence in support of his complaints, and within the judgment we have referred to the numerous occasions where Mr Scott-Joynt asked for this information from Professor McMahon, to no avail at all – it simply never arrived.

852. We have, within these conclusions, already referred to the email from Ms Hudson of 11 August 2022, raising concerns about the delay and the lack of progress, and she recommended giving Professor McMahon a hard deadline for the supply of his evidence, yet still nothing happened. Ms Hudson was not called to give evidence on the issue of oversight so we do not have the benefit of an account from her as to what went wrong.

853. Professor Ferran told us her view that Professor McMahon was overwhelmed and paralysed, and whereas we accepted the former and rejected the latter, it still does not explain why the University, or specifically the HR Department, took no action and instead allowed this go on for as long as it did.

854. We simply cannot accept the Respondents' answer to this that the delay was all, or mainly, the fault of the Claimant. We also do not accept that the blame can lay at the feet of Mr Scott-Joynt either – it was the University which had commissioned him, and once it became obvious that the pace of investigation was as poor as it was, it ought to have stepped in but it failed to do so.

855. The University's HR Department must have surely appreciated the amount of stress that these delays would have been placing on the Claimant, therefore it was all the more baffling why it was permitted to casually drift in the way that it was.

856. This is a well-resourced HR Department, we do not infer a lack of competence on their part. The email from Ms Hudson of 11 August 2022 is again key in our considerations, and those on the circulation list, including Ms Akroyd as well as Professor Peake, would have understood the stark message being given that the delays were a problem and needed resolving. The email was met with further inaction.

857. The length of the delay was extraordinary, but we found the failure of HR to have any oversight equally extraordinary. Having seen the delays up to August 2022, and having placed on record Ms Hudson's concerns about the lack of progress, yet no action was still taken, and in the absence of a credible explanation from the Respondents, we draw the inference that the delays in this matter were materially influenced by the Claimant's protected disclosures – we can find no other credible reason why this happened.

858. We again form the view that there was some level of organisational desire within HR to continue and complete the process rather than address the fact that Professor McMahon's grievance was unsubstantiated and unevidenced. We find some support from that from the email from Professor Reynolds on 23 April 2023 where he reported Professor

McMahon's concern that he was being forced to fight the defamation case by the University. We find further support from HR's resistance to Professor McMahon where he raised the possibility of withdrawing his grievance.

859. Whereas we do not regard delay, in itself, as evidence of whistleblowing detriment, however we find that the disclosures raised matters which were repeatedly described as serious and urgent, yet despite this, the University's response became characterised by prolonged inertia, repeated slippage of deadlines and a lack of meaningful oversight. We infer that the delays reflected a reluctance to engage directly with allegations arising from the protected disclosures and were therefore materially influenced by them.

860. We again find that with respect to time, this allegation forms the basis of an act extending over a period within the meaning of s. 48(4)(a) Employment Rights Act 1996, and as such the complaint has been brought within time.

861. We therefore find that detriment 2 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent.**

Issue 4.4 – R2 failing to withdraw his complaint against the Claimant following the findings of the investigation (Detriment 4)

862. We have already found Professor McMahon's Dignity at Work complaint to have been retaliatory and a detriment for the Claimant having made a protected disclosure. We do not repeat the reasoning here.

863. We have also already addressed the defamation proceedings before the High Court whereby Mr Justice Linden found both imputations to have been defamatory, and Professor McMahon conceded that the first imputation (the Claimant making allegations he knew to be false) had been defamatory. We do not repeat that reasoning here.

864. We agree with the Claimant that Professor McMahon knew that his grievance was untrue and without foundation from inception, and that it was retaliatory as we have already found. No evidence was ever produced to support it, and we agree with the Claimant that Professor McMahon likely acted in the heat of the moment when he filed it, and he could have considered withdrawing it soon thereafter when he had time to think and reflect on his actions. Professor McMahon did not do so.

865. Leaving aside the failure to withdraw it swiftly thereafter, the hearing before Mr Justice Linden in April 2023 was an opportune moment, as the Claimant says, to have taken stock as Professor McMahon would surely have known by that stage, some 21 months or so later, there was no evidence to support the grievance and therefore he could have withdrawn it then but Professor McMahon did not do so.

866. Professor McMahon was clearly cognisant of the ability to withdraw the complaint as he raised the question during his meeting with Professor

Ferran on 2 May 2023 however HR resisted him doing so and Professor Ferran said she would take this away, however she did not take any action. We infer from the fact that Professor McMahon raised the question and attempted to withdraw the grievance at that time, he recgonised, given the defamation proceedings, that there was nothing to support his complaints irrespective of whether he read Mr Scott-Joynt's reports – this was Professor McMahon's grievance, he had been repeatedly asked to evidence it but failed to do so, and he must have known there was nothing to support it.

867. Whereas in the usual course of events we may find that not withdrawing a complaint is unlikely to amount to an additional detriment beyond the making of the complaint in the first place, in the specific facts of this case, given the clear outcome of the defamation proceedings combined with the repeated failure to evidence the complaint, we find that the Claimant was subjected to the additional detriment of the complaint not being withdrawn in April/May 2023 when it had became clear that it was baseless, retaliatory, and defamatory. The detriment was the unnecessary prolonging of this process against the Claimant in addition to having brought the claim in the first place.

868. We draw the inference that the reason for not doing so was materially influenced by the Claimant's protected disclosures, for the same reason that we have upheld Issue 4.3 earlier, and that Professor McMahon was continuing to retaliate against the Claimant for him having raised concerns about his treatment of Dr Pebody and his handling of the ORP grant.

869. We have accepted that Professor McMahon likely felt overwhelmed due to the combined effect of the investigations and the defamation proceedings, however we have rejected the assertion that he was somehow paralysed by them and incapable of making decisions as he is the one who raised the issue of a withdrawal on 2 May 2023 when HR resisted him doing so.

870. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

871. We therefore find that detriment 4 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First and Second Respondents.**

Issue 4.7 – R1's failure to address the grievance of 30 August 2022 in a timely way and to provide any outcome by 10 April 2024. (Detriment 7)

Issue 4.10 R1's failure to investigate properly the allegations against R1's Human Resources department in C's grievance of 30 August 2022 evidenced in the grievance outcome of 16 May 2024 from Professor Harper. (Detriment 10)

872. These two Issues may be considered together as they concern the same subject matter. The outcome was received on 15 May 2024 not 10 April nor 16 May 2024.

873. The delays in dealing with the Claimant's grievance of 30 August 2022 were extraordinary. It took six months for Professor Harper to be appointed as the Responsible Person in February 2023; the Claimant was not interviewed until May 2023, some nine months after his initial complaint; and the outcome was not issued for a further 12 months until 15 May 2024. It took 624 days to complete the process. The time taken was quite clearly a detriment to the Claimant.

874. The process ought not to have taken anywhere near as long as it did. Professor Harper was not tasked with re-running Mr Scott-Joynt's investigation, his task was a discrete one and it was limited to the handling of the process by the HR Department.

875. We appreciate that Professor Harper was busy and had other commitments, and we appreciate that this was a complex matter and that it was document heavy, but nevertheless the task before Professor Harper was to focus on the actions of the HR Department in that earlier process.

876. The outcome letter produced by Professor Harper, leaving aside its many deficiencies which will be addressed below, does not give the impression of 14 months' work (the period between his appointment in February 2023 and the outcome in May 2024).

877. As we have already seen elsewhere in this matter, this process was allowed to drift on without any oversight from the Respondent's HR Department which had been responsible for appointing Professor Harper to determine the Claimant's grievance of 30 August 2022. There was an absence of any desire to complete this process in a timely way, to the obvious detriment of the Claimant.

878. We were unable to accept that the nature or complexity of the task required it to take this long. We do not find that there was any lack of competence on the part of Professor Harper in his handling of the process, or within the Respondent's large and well resourced HR Department either. We have not been provided with evidence of any oversight or scrutiny of this process at all by the HR Department which we have found to be puzzling.

879. Contrary to Professor Harper's evidence that he had no real knowledge of the Claimant's disclosures, we have already found that he knew about them as the Claimant had sent them to him and discussed them with him.

880. We keep asking ourselves why these delays were permitted to happen. We draw the inference the Claimant invites us to make, which is that the reason for the treatment is because an institutional mindset had formed about the Claimant in the intervening period since making his initial disclosures, and HR (and others) had formed the view that he was a troublemaker due to his whistleblowing and not worthy of a timely consideration of his complaints.

881. We do not suggest that there was a formal conspiracy either within HR or between HR and Professor Harper (and others), rather we simply

recognise that some of those within HR formed a negative view of the Claimant because of his protected disclosures and allowed Professor Harper to take as long as he did because of that negative view.

882. We note that by this stage the Claimant had become associated with a succession of complaints and disclosures, and we find that the University's approach was influenced by a wish to achieve finality and minimise further challenge. We view that objective of the University to be inseparable from the protected disclosures which had generated the continuing dispute.

883. Accordingly, the failure to address the grievance of 30 August 2022 in a timely way was materially influenced by the Claimant's protected disclosures.

884. We have found that the complaint was brought within time for the purposes of s. 48(3)(a) Employment Rights Act 1996.

885. We therefore find that detriment 7 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent.**

886. We will now examine detriment 10. We have also found that in addition to the unacceptable delays, Professor Harper failed to properly investigate the Claimant's grievance and we have identified various deficiencies within that process. These have already been explored in detail in the findings of fact above, we will simply highlight the main deficiencies in that process below.

887. Some of the shortcomings were due to the way in which Professor Harper conducted this process from the start by not attempting to speak to Professor Peake, Ms Hudson and Ms Akroyd, and instead relying on written responses, many of which were delayed. As the Claimant argues, this minimised the opportunity for proper scrutiny by not allowing for follow up questions on the spot.

888. We did not draw a negative inference from Professor Harper's reliance on HR and legal advice as this is quite normal in our industrial experience.

889. As we have recorded, we could not accept that the repeated and obvious failure to share with the Claimant Professor Peake's responses to Professor Harper, were accidental or due to incompetence. We also found that Professor Harper had failed to deal with the complaints about 8 breaches of confidentiality by Professor McMahon. In short the reason Professor Harper found no evidence of breaches was because neither he nor anyone else attempted to look at them in the first place, this was effectively to look the other way and to brush it under the carpet.

890. When Professor Harper examined the Claimant's complaints about delays in the earlier process there was no examination of the reason why there had been no oversight by HR, a matter which we have had to grapple with earlier in this judgment.

891. Likewise Professor Harper failed to examine the reason why the informal stage of the Dignity at Work Policy was not attempted.

892. We did not draw a negative inference from Professor Harper's conclusion with respect to commencing the Dignity at Work investigation in the absence of evidence as the policy is clear that the evidence should (rather than must) be included, however as we have explored in this judgment the issue was much more nuanced than that.

893. Leaving aside that it was permissible or understandable that an investigation might be launched absent supporting evidence from the start, the question to be resolved (which was not addressed by Professor Harper) is why it was then allowed to proceed so long when that evidence never materialised. This was not addressed.

894. We also formed a negative view of Professor Harper's non-engagement on the issue of the delay in notifying the Claimant about Professor McMahon's complaint against him. It took three months for the Claimant to be made aware of that matter, the Claimant was entitled to ask why that had happened, however Professor Harper's reply that it was due to *"the difficulty in resolving this complexity, rather than any failure of responsibility on the part of the Director of HR"* did not make any sense at all and served simply to brush the complaint under the carpet again.

895. The Claimant argues that the outcome was partisan and that Professor Harper's primary concern was to minimise any criticism of the University by either refusing to investigate the concerns, or failing to engage with them or the core essence of the complaints, and also to deflect. We agree with that assessment of Professor Harper's handling of the grievance which in many ways presented to us not as an attempt to get to the truth, but rather to do everything possible to shut it down and to deflect.

896. We find that this mishandling of the Claimant's grievance was a detriment to him as he was deprived of the fair hearing of his complaint that he was entitled to expect from his employer.

897. We will consider the reason why shortly, however it is appropriate to consider what happened next in this process as that provides illumination as to the reason why.

898. After the Claimant appealed the outcome, and Ms Goodman conducted an investigation in which she identified there had been a flaw in Professor Harper's handling of the breach of confidentiality complaints, this was then rejected by Professor Flewitt on the flimsiest of grounds. Rather than grapple with the crux of the issue which was why no action had been taken on the repeated confidentiality breaches by Professor McMahon, instead Professor Flewitt simply found that it was not the responsibility of Ms Hudson (HR Director) to deal with it, rather it was for Professor Peake. The matter was left there and again simply brushed to one side with the crux of the complaint not dealt with at all.

899. We drew a further negative inference from this as the handling suggested that the University was determined to do all that it possibly could

to avoid addressing that complaint. This was more concerning because some of the breaches of the confidentiality provisions of the Dignity at Work Policy were easy to verify, yet nothing was ever done about them.

900. No matter who the Claimant raised the confidentiality breaches with, and no matter what evidence he provided, those he approached made sure to look the other way. Within the hearing before us, when we examined the breaches of confidentiality ourselves, the response from Professor McMahon was that he had been entitled to do what he did, and the University for its part sought to criticise the Claimant by accusing him of breaching confidentiality himself by either sharing the Delays Document or signing a letter of no confidence in Professor McMahon – again these were pure deflections. No-one with the University was prepared to accept the truth which was that Professor McMahon had breached the confidentiality provisions of the Dignity at Work Policy.

901. The inexplicably poor handling of the Claimant's grievance of 30 August 2022, together with the deflective attempts to dismiss the appeal, lead us to the conclusion that the Claimant's protected disclosures were at least a material influence on the way in which he was treated during this incredibly long drawn out process where some of his complaints were not even examined, and many of those which were dealt with were dismissed on the most flimsy grounds.

902. We can find no other credible explanation for what transpired in this process, and we agree with the Claimant's assertion that there had become an organisational enmity towards him, he was seen as a problem or a troublemaker because of his protected disclosures. We find that those involved in the handling of the Claimant's 30 August 2022 grievance were motivated by a desire to shut down or to bring to an end the Claimant's raising of protected disclosures which risked damaging the reputation of the University which they sought to protect, even if that involved ignoring obvious complaints or dismissing them for vague or opaque reasons.

903. We record that the repeated failure of Professor Harper and others to engage with specific complaints, the willingness to accept allegations against the Claimant notwithstanding the absence of evidence; the repeated use of reasoning (by Professor Harper and others) which did not address the substance of complaints; the unusual tolerance of extreme delay by Professor McMahon; and the fact that decision makers often adopted positions which minimised scrutiny of allegations arising from the Claimant's protected disclosures, causes us to draw the inferences that we have in the preceding paragraph and with respect to other detriments in this matter.

904. We have noted that these were not isolated events, they kept happening – whether it was Professor Harper, Professor Munir, Professor Flewitt, Ms Rampton (R3) or Professor Prentice (R4) – we saw the same pattern of complaints being ignored or dismissed without examination, or for reasons which do not stand up to modest scrutiny.

905. We make it clear that we do not regard poor administration, delay, or flawed decision making of themselves as being sufficient to establish causation in a case like this. However, we saw no evidence of a lack of competence, rather it is a combination of these factors which leads us to

our conclusion, and the fact that these things kept happening by repeated decision makers. This was not coincidence, but it was not a formal conspiracy either, but there was a shared desire to close down whistleblowing complaints which might be damaging to Cambridge University and the Institute of Astronomy. The involvement of HR in drafting many of these outcomes for some of the decision makers and providing advice to others, was a common denominator, as was the involvement of the Registrary later.

906. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

907. We therefore find that detriment 10 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent.**

Issue 4.11 – R1's failure to hear C's appeal of the grievance outcome from Professor Harper of 20 May 2024. (Detriment 11)

908. This is not a complaint which the Tribunal heard a great deal of evidence about, and we were for the most part referred to the investigation by Ms Goodman and the outcome letter from Professor Flewitt. We did not receive statements from either person.

909. It was clear to the Tribunal that irrespective of the criticisms we have made of Professor Flewitt's outcome which dismissed, *inter alia*, the complaints about breaches of confidentiality, there was not a failure to hear the Claimant's appeal of the grievance outcome.

910. The factual premise of this complaint has not been made out and therefore we **dismiss** it.

Issue 4.8 – R4's rejection on 6 November 2023 of C's complaint of 15 June 2023. (Detriment 8)

911. It became clear during the hearing that whereas Professor Prentice (R4) was named as being responsible for this matter, the decision was taken by Ms Rampton (R3) the former Registrary. Both witnesses gave evidence on this during the hearing and therefore as the Claimant argues, there is no prejudice to the Respondents in substituting Ms Rampton (R3) for Professor Prentice (R4).

912. We have found that there was a detriment to the Claimant, not simply in the rejection of the grievance (which can amount to a detriment of itself) but also in what the Tribunal found to be the poor handling of this complaint by Ms Rampton.

913. By way of reminder the Claimant's complaint concerned Dr Michael Glover's handling of the whistleblowing process and the terms of reference which had been produced; the involvement of allegedly conflicted individuals; and the length of time it took to investigate the matter.

914. There were delays in Ms Rampton's handling of this matter, and whereas the five months taken to deal with it may seem rapid in comparison with the other processes in this case, nevertheless the time taken did not seem commensurate with the limited focus of this complaint. The four emails which Ms Rampton relied upon in evidence as the reasons for the delay were not even mentioned in her outcome letter and we were not persuaded that they had anything to do with the time taken.

915. As regards the outcome letter, it was clear to the Tribunal when considering the original terms of reference there were matters which the Claimant had been raising (the involvement of Professor Peake, Ms Akroyd and Ms Birrell) which were not included or considered, and Ms Rampton was not able to give us an explanation as to why.

916. Similarly with respect to the delay in the original process being complained about, the University and Ms Rampton seek to blame the Claimant for this, referring to his insistence that his concerns be dealt with under the Whistleblowing Policy, however that was the appropriate policy for the type of matters he was raising to be examined under, and even Mr Scott-Joynt agreed with the Claimant on that issue.

917. Ms Rampton's finding that delays were incurred obtaining some further information from Professor McMahon was inaccurate. Delays would have been incurred requesting it and waiting for a response which never came, however nothing was provided by Professor McMahon.

918. As recorded earlier, the Tribunal was troubled by Ms Rampton's evidence which we did not find to be satisfactory when it came to her examination of the reasons for delay and the lack of oversight and that it was allowed to drift. Ms Rampton attempted to tell us that she disagreed that there was no oversight and that it had been allowed to drift, and when asked the obvious question of how she knew that, her evidence was she was not involved and could not tell us.

919. Ms Rampton was not in a position to tell us that there had been oversight and we formed a negative view of her evidence on that matter at least as it appeared to us that it had been said in order to shield the University from criticism in these proceedings, and it gave the impression of having been made up on the spot.

920. We were also troubled by Ms Rampton's finding that Professor McMahon would not have been aware that the Claimant had made protected disclosures. The foundation for this finding was questionable – whereas the Claimant's email of 27 July 2021 does not state explicitly that a protected disclosure had been made, it would have been reasonably clear from the email that a concern had been raised about Professor McMahon's conduct and that an investigation was likely. Moreover as no-one (including Mr Scott-Joynt and Ms Rampton) ever asked Professor McMahon about that issue, it appeared difficult to see how Ms Rampton could have reached the decision she did.

921. The Claimant has also raised the issue of Ms Rampton's tone in her outcome letter to him, and we agree that there was a hardened tone towards him which had shifted from the earlier correspondence, and whilst Ms

Rampton clearly would not have appreciated the Claimant's comparison with the Chester Hospital case (which she might legitimately have found distasteful or ill advised), the suggestion that this was threatening was an overreaction. Ms Rampton's change in tone was also visibly different when she criticised the Claimant for making what she said were inaccurate statements, and then threatening the Claimant with disciplinary proceedings under the Dignity at Work Policy about his interaction with Dr Pebody at their meeting, which is not something even Dr Pebody had raised.

922. Having found that the above was a detriment to the Claimant we now examine the reason why. We are again of the view that the process was poorly handled as some aspects of the decision were reached but could not be explained and certain matters (such as delay) were dismissed out of hand without any examination. We also formed the view from some of Ms Rampton's evidence, particularly on the matter of oversight where her evidence did not make sense, that Ms Rampton had been motivated in part to shield the University from criticism by the Claimant's protected disclosures and to shut the matter down, and that this reflected an institutional desire to bring to an end issues arising from the disclosures rather than engage fully with them. On that basis we find that the Claimant's protected disclosures had been a material factor in the way in which his grievance was handled by Ms Rampton. The disclosures therefore materially influenced the detriment.

923. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

924. We therefore find that detriment 8 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent and the Third Respondent.**

Issue 4.6 – R1, R3 and R4's rejection by letter dated 19 January 2024 of C's grievance dated 12 December 2023 (Detriment 6)

925. The Claimant's grievance of 12 December 2023 was directed at the University (not Professor McMahon) and it concerned the University's decision to allow Professor McMahon to access or obtain the benefit of one of its insurance policies to fund his defence to the Claimant's defamation claim against him.

926. This ought to have been a relatively straight forward matter to have dealt with however it was poorly handled mainly by Ms Rampton (R3) whose name the decision was issued under, but also Professor Prentice (R4) who also gave evidence that she had also been responsible for this decision.

927. The main problem with the handling of this complaint is that yet again it did not address what the Claimant had been complaining about. The grievance was dismissed on the basis that this had been a private legal dispute between the Claimant and Professor McMahon, yet that was the crux of the complaint – the Claimant was arguing that it was a private dispute which the University had involved itself in by funding the defence of one of the parties. There was no attempt to get to grips with what the

grievance was about – and the decision to dismiss it for that reason suggested another attempt at brushing things under the carpet.

928. The grievance was also dismissed on the basis that it had been historical, however it was nothing of the sort as the policy was still being utilised the month before; the Claimant was accused of attempting to revisit matters which had already been the subject of extensive investigation – and this was false, there had been no investigation into what the Claimant had complained about.

929. The grievance was also dismissed on the basis that the Claimant had allegedly failed to raise the matter informally. The Tribunal found this reason to be incredible because the Claimant had repeatedly tried to raise this informally yet no one would engage on the subject (including Ms Rampton the author of the letter, and also Dr Glover). The Claimant alleges that this reasoning was disingenuous, and the Tribunal agrees as Ms Rampton would have known this to be incorrect.

930. Moreover, we noted the clear difference in treatment to which we have already referred – Professor McMahon's complaint against the Claimant was accepted and investigated for almost two years with no attempt at informal resolution, yet that was the reason relied upon for dismissing the Claimant's complaint against the University and others about allowing Professor McMahon to use the insurance policy. There was a clear difference in treatment, and whereas we note that different people were involved, nevertheless the difference in how the Claimant was treated was quite stark and unjust.

931. Ms Rampton also relied upon Mr Scott-Joynt having investigated the Claimant's relationship with Professor McMahon, however that was not what the Claimant was complaining about and Ms Rampton would have known that. The outcome from Ms Rampton has given us the clear impression of someone looking for any reason to dismiss the complaint rather than engaging with what it was about. Put simply this was an attempt to deflect.

932. The Tribunal also did not find Professor Prentice's evidence to be any more satisfactory on this issue than Ms Rampton's as her account was that the matters had already been thoroughly considered, and also that they had been intrinsically and thoroughly investigated. Professor Prentice could not explain to us then who it was who she says had investigated the use of the insurance policy. The reason was because nobody had done so.

933. The Tribunal could not understand why the University had allowed this issue of the use of the insurance policy to fester as it did. Dr Glover repeatedly refused to engage on the matter when it was raised informally with him, and his responses ranged from simply ignoring the Claimant, to then refusing to provide a response.

934. This tactic was baffling given that Mr Halls, a relatively junior member of staff, as will be noted below, was able to give the Tribunal a convincing explanation which we had no hesitation in accepting, and the Claimant has even confirmed in his closing submissions that he was one of the three of

the Respondent's witnesses (together with Professors Reynolds and Challinor) whose credibility he did not seek to criticise.

935. Whereas the Tribunal remains ever mindful of the guidance in the case of ***Mayanja*** which warns against making overarching credibility assessments, we have found some of Ms Rampton's evidence to be unsatisfactory and we draw the negative inference that her reasons for acting in the way in which she did at the material time in the responses to the Claimant's grievances, was materially influenced by the Claimant having made protected disclosures.

936. We find that Ms Rampton, like members of the HR Department, had formed a negative view of the Claimant due to his whistleblowing, and that he had become a problem for them and her concern was to bring an end to further challenge from the Claimant in order to protect the University, and this included dismissing his complaints again on the most flimsy grounds.

937. We can find no other credible explanation for why this grievance was rejected in the way in which it was, being based upon reasoning which was quite obviously flawed – including informing the Claimant that it had already been investigated – which it quite clearly had not.

938. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

939. We therefore find that detriment 6 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent, the Third Respondent, and the Fourth Respondent.**

Issue 4.12 – R1's refusal to address C's grievance of 2 September 2024 which, inter alia, constitutes a breach of Statute C, Special Ordinance C(xii) of R1's Statutes and Ordinances. (Detriment 12).

940. The Claimant had sought to complain that Professor Peake failed to engage in a health and safety emergency and an illegitimate attempt to dismiss Dr Pebody. The Claimant also complained that Professor Peake authorised an investigation with no evidence presented and despite his knowledge that Professor McMahon had bullied Dr Pebody. The Claimant also complained about Ms Akroyd's failure to discharge her duties competently; that she allowed Professor McMahon to use the redundancy process to harm Dr Pebody; and that she and others in the HR and Legal departments had allowed Professor McMahon to make use of the University insurance policy.

941. Professor Munir dismissed the complaint the following month on the basis that these matters had already been dealt with by Mr Scott-Joynt and the Academic Secretary, Dr Glover, following the Claimant's original complaint in August 2021. This was incorrect and anyone reading the original complaint and the investigation report would note that these specific matters had not been raised or addressed, and further Mr Scott-Joynt had been clear and careful to avoid widening the terms of reference as the matter progressed.

942. We make no criticism of Professor Munir for the content of the letter as he was not the person who wrote it, nevertheless we record our concern that he simply put his name to it and then rubber stamped it without any real independent thought.

943. The author of this letter has not been identified but it was someone within the HR Department. We find that dismissing the grievance on the basis of flawed reasoning like this, was a detriment to the Claimant.

944. We noted the same reasoning being adopted here as with earlier complaints – the suggestion that this had all been dealt with before by someone else, when even a cursory examination of the papers would have identified that the specific complaints had not been raised or addressed before.

945. As to the reason why, given the grievance was quickly dismissed without even interviewing the Claimant, and given the reliance on flawed reasons, we again draw the inference that this was a further attempt by someone within the HR Department to shut down any criticisms of the University and to bring an end to challenges from the Claimant due to his whistleblowing.

946. We again find that the Claimant's protected disclosures had been a material influence on the way in which the grievance was handled.

947. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

948. We therefore find that detriment 12 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint as against the First Respondent.**

Issue 4.13 – R3's refusal and failure to take any action in relation to the matters brought to her attention in C's complaint to her of 6 October 2024 (about failure refusal to hear his grievance in breach of C's legal rights and R1's Statutes and Ordinances). Her most recent refusal was on 15 October 2024. (Detriment 13)

949. The correct Respondent for this complaint is Professor Prentice (R4) not Ms Rampton (R3), and we accept that there was a typographical error within the original list of issues which had not been identified until the hearing.

950. This was essentially a complaint to Professor Prentice about Professor Munir's rejection of the Claimant's grievance at Issue 4.12 above. The complaint was rejected on the basis that Professor prentice considered that the matters had already been considered sufficiently by the University.

951. We were troubled by how this decision was reached as we understand that Professor Prentice's outcome letter was drafted by someone else, however we do not know who, yet Professor Prentice told us that she had undertaken a full review of the papers. That was incredibly

unlikely that Professor Prentice would have been able to undertake a full review of the considerable documents in this matter given how quickly the grievance was dispensed with and also what we assume would be her incredibly busy workload in someone of her seniority.

952. We were not satisfied that there had actually been any sort of review of the papers, rather we found that the complaint was summarily rejected, without serious consideration and this was a detriment to the Claimant.

953. As to the reason why this was done, we again draw the same conclusion as we have done with respect to some of the other issues in this matter. Whereas we do not know the identity of the author of this letter, it is likely either someone within the HR Department or possibly Ms Rampton, our view is that the decision was taken because the Claimant was seen as a problem because of his whistleblowing, there was a desire to shield the University from criticism, and there was an attempt to shut this down. On that basis we infer that the reason for the treatment was materially influenced by the Claimant having made protected disclosures.

954. This complaint was brought in time under s. 48(3)(a) Employment Rights Act 1996.

955. We therefore find that detriment 13 has been made out; the Claimant was subjected to a detriment for having made a protected disclosure; and that complaint was brought within time. **We uphold this complaint against the First Respondent and the Fourth Respondent.**

Issue 4.9 – R1's failure to safeguard C by moving Professor McMahon's office close to C at the Institute of Astronomy so that C is now rarely able to use his Office. (Detriment 9)

956. The complaint which had been brought was about the decision to move or to locate Professor McMahon close to the Claimant. The evidence we heard, including the questions put to Professor Clarke, were about the delays in moving Professor McMahon – that is a different complaint. It was Professor McMahon who made the decision where to be located after his Directorship ended, however the complaint was never put to him even though I queried during the hearing if there any questions for him on this matter.

957. Whereas no application was made to amend the claim, we have chosen to address this complaint because the premise of the complaint is about failing to safeguard Professor McMahon and the complaint about the delays in moving him falls within the scope of that original premise. Moreover, Professor Clarke had already addressed it in her witness statement and was able to answer questions on it during her oral evidence. There is therefore no prejudice to the Respondents in dealing with the complaint in this wider context.

958. We have found that there was a detriment to the Claimant as both he and Professor McMahon were involved in complaints about the other and the investigations into those matters were the subject of exceptional delays, thus prolonging what was already clearly a difficult and stressful process, for both of them. The Claimant had spoken out about Professor McMahon's

treatment of Dr Pebody, he had raised earlier on the potential for retaliation from him, and he was then the subject of a retaliatory grievance from Professor McMahon. Having Professor McMahon located within 2/3 doors away from the Claimant was distressing for the Claimant at the end of his sabbatical and return from sick leave as he felt unable to go back and to use the office he had for many years

959. We have also found that the way in which Professor Clarke addressed the Claimant's concerns was poor. Professor Clarke would have known about the recent history between the two as the Claimant had reached out to her about his initial concerns about the treatment of Dr Pebody, and he had also shared the Delays Document with her. Professor Clarke was on notice not simply about the protected disclosures, but also the state of relations between the two professors.

960. Professor Clarke delayed dealing with the Claimant's concerns for a considerable period of time, citing there was a high bar for moving people. The Claimant had to repeatedly engage with Professor Clarke for her to take any action, and even when he took the step of referring himself to Occupational Health which then recommended consideration of the office arrangements, still no action was taken for a further year.

961. Professor McMahon was eventually moved in the following academic year as part of the broader office moves when new staff joined and others left.

962. We find that the poor handling of the Claimant's concerns was a further detriment to him as it really ought not have taken as long as it did to have moved the two professors apart, and there was no evidence of Professor Clarke ever asking Professor McMahon if he would move before the new academic year. There was a failure of Professor Clarke to take seriously the Claimant's Occupational Health report which was surprising given her role of Wellbeing Advocate, although we understood no training had been provided for that role.

963. We have considered the issue of causation and asked the reason why these things happened, and whether the Claimant's protected disclosures were a material influence on the way in which he was treated.

964. As regards the actual complaint which has been brought, the decision to move Professor McMahon close to the Claimant, we are not satisfied that this was materially influenced by the Claimant's disclosures. The allegation was not put to Professor McMahon who was the person who made the decision, and whereas we have found that he has engaged in retaliatory conduct on occasion, we are not prepared to simply make the assumption that this too was motivated by the Claimant's protected disclosures.

965. We heard evidence that at the end of the Directorship it was normal to move back into that corridor; we heard evidence that it was desirable to work in that location due to the proximity to the Institute(s); and we also understood that the Claimant was either on a sabbatical or about to start it when Professor McMahon returned at the end of his Directorship. It was clearly unwise to have allowed the two professors to be located so close

together given what had transpired, and it was perhaps asking for trouble, however we are not persuaded that the motivation had anything to do with the Claimant's protected disclosures at all.

966. As regards the time taken to move Professor McMahon, this is not the specific complaint which had been brought but it forms part of the overall consideration, we are not persuaded that this was motivated in any way by the Claimant's protected disclosures.

967. It appeared to the Tribunal that Professor Clarke (and her Co-Director) had found the task of asking Professor McMahon to move too daunting (with all the associated moves) when they considered that at the start of the next academic year they would have to again look into accommodation for the new joiners. We appreciate that engaging with Professor McMahon, particularly at that time, would have been very challenging given how overwhelmed we heard he was (as per Professor Ferran's evidence) as well as what we know about his condition and how this presented.

968. We also noted that Professor Clarke had previously been supportive of the Claimant and his concerns. Professor Clarke was receptive and sympathetic to the Claimant initially raising concerns about Dr Pebody; she then reached out to the Claimant days later to check in on Dr Pebody's health; and she was also supportive about the Delays Document although she took issue with some of the wording.

969. In her witness statement Professor Clarke said that she had explained to the Claimant the rationale for moving Professor McMahon (rather than the Claimant) and that *"It was certainly not an expression of who we thought was at fault."* The Claimant interprets that to mean that his protected disclosures were a factor in how Professor Clarke treated him. We do not interpret the remark in that way – it appeared to the Tribunal that Professor Clarke was keen to explain she was not taking sides.

970. It is our finding that the reason for the delay in moving Professor McMahon had nothing at all to do with the Claimant's protected disclosures, rather it was simply because of the difficulty in coordinating the office moves, and to a lesser extent, the difficulty in engaging with Professor McMahon at that time who was overwhelmed and whose decision making presented as chaotic.

971. Whereas it was incredibly unwise to have located the two professors so close together, and the time taken to resolve the situation was excessive and there was an unacceptable delay in implementing the advice from Occupational Health, the Claimant's protected disclosures were not a factor at all in that treatment. **We dismiss the complaint at Issue 4.9.**

Issue 4.14 – The First Respondent's failure to investigate, and its facilitation of, the improper use of the First Respondent's insurance policy to support the Second Respondent in the defamation proceedings brought by the Claimant. (Detriment 14)

972. As regards the University's failure to investigate, we have already addressed that matter earlier in this judgment at Issue 4.6.

973. As regards facilitation of the improper use of that insurance policy, we are not persuaded that the factual premise of the allegation has been made out as we are not in a position to know what information passed from Professor McMahon to either the University or the insurers (or from the University to the insurers) from the time when the policy was first made use of to fund the defence to the defamation claim until the point that those proceedings were settled. We cannot say whether there was full and frank disclosure from Professor McMahon and the University to the insurer – we simply do not know, and we are not prepared to draw an inference that there was not. We have not made a finding of fact that there was any improper use.

974. In addition, we were not persuaded that the Claimant had in fact suffered any detriment by the University allowing Professor McMahon to use the insurance policy. Whilst it is suggested that this may have lengthened proceedings, we are not satisfied that is the case at all, having lawyers on board on both sides, as this Tribunal hearing demonstrates, has saved time and enabled the hearing to be conducted efficiently. Moreover, the Claimant was successful in those defamation proceedings so we were not persuaded that he had in fact suffered a detriment at all.

975. Leaving aside the issue of detriment, and for the sake of being completely thorough, we have nevertheless examined the issue of causation and asked the reason why this happened – and we have asked whether the Claimant's protected disclosures were a material influence on the decision to allow Professor McMahon to make use of the insurance policy.

976. We find that Mr Halls' evidence provides an honest, a convincing and a credible answer to the reason why question – the reason why Professor McMahon was permitted to use that policy was simply because it was standard practice when the University or one of its officers has a claim brought against them in connection with their work, the University automatically passes the claim to the relevant insurer (depending upon the policy) and the insurer then decides whether it can act. There was no more to the decision than that, and the Claimant's protected disclosures were of no influence at all on the University's adherence to its standard practice.

977. **We therefore dismiss this complaint at Issue 4.14** primarily because of the lack of detriment, but even if there had been a detriment, it was not materially influenced by the Claimant's protected disclosures.

Remedy

978. The matter will now proceed to a remedy hearing and further case management directions will follow separately.

979. However, as both parties are legally represented, we would encourage them to attempt to resolve the issue of remedy between them in furtherance of the Overriding Objective, and also being mindful of the limited resources of the Employment Tribunal, and the number of cases waiting to be heard.

980. It has also not escaped the Tribunal's attention that both the Claimant and Professor McMahon have found these proceedings to be distressing as they have brought up old memories. If the parties can resolve the issue of remedy themselves that may help both sides to put this long running dispute behind them, to move on, and to find closure.

Additional matters

981. These reasons have been produced on 10 August 2026 which was within six weeks of the end of the liability hearing.

982. I apologise in advance on behalf of the administration if there is any delay in the judgment being sent to the parties – there is a considerable backlog of work for the administration in this Tribunal region.

Approved by:

Employment Judge Graham
10 August 2026

JUDGMENT SENT TO THE PARTIES ON 10 August 2026

L TAYLOR-HIBBERD
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/